United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7273

United States Court of Appeals

For the Second Circuit.

FELIX MERCED and MOISESTA MERCED,
Plaintiffs-Appellants,

against

AUTO PAK COMPANY, INC.,
Defendant-Appellee,

S & C LIQUIDATING CORP., AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., ALBERT SHAYNE and ARTHUR CONTENT,
Defendants.

AUTO PAK COMPANY, INC.,
Third-Party Plaintiff,

against

SOUTHBRIDGE TOWERS, INC.,
Third-Party Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

Volume I—Pages 1a to 462a.

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Brooklyn, N. Y. 11201

UNITED STATES COURT OF APPEALS
FILED
JUL 14 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1975

(6515)

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

FELIX MERCED and MODESTA MERCED,

Plaintiffs-Appellants,

v.

AUTO PAK COMPANY, INC.,

Defendant-Appellee,

S & C LIQUIDATING CORP., AUTO PAK DIVISION OF FLINCH-BOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., ALBERT SHAYNE and ARTHUR CONTENT,

Defendants.

- -X

AUTO PAK COMPANY, INC.,

Third-Party Plaintiff,

against

SOUTHBRIDGE TOWERS, INC.,

Third-Party Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

RELEVANT DOCKET ENTRIES.

1973

April 12 Filed Complaint Issued Summons.

June 7 Filed deft. Gulf & Western Manf. Co.'s ANSWER to the complaint. JRM

Nov. 2 Filed Deft. Gulf & Western Mfg. Co. (SYSTEMS) s/h/a Auto Pak, etc. CROSS-NOTICE, with affdvt. of Service by Theresa Rignola on 10/26/73 by mail on: Katz, Shandell, Katz & Erasmous for Pltff.
Stephen A. Block for Deft. Content
Morris, Duffy, Ivone & Jensen for Deft. Shayne & Auto Pak
Malvern J. Shefield for defts. S & C Liquidating Corp. & Auto Pak Co.

Nov. 13 Filed Memo End on Notice of Motion to Dismiss complaint dtd. 6/1/73. Motion granted on consent & case dismissed as against Deft. Arthur L. Content. So Ordered. Tyler, J.

1974

Mar. 3 Filed Interrogs. propounded by Defts. Shayne & Auto Pak to Pltffs.

May 13 Filed Pltffs. Answers to Interrogs. of Deft. Gulf & Western.

May 13 File Pltffs. Answers to Interrogs. of Deft. Auto Pak & Shayne.

July 29 Filed 3rd-pty. pltffs. 3rd-pty. summons and complaint.

Sept. 11 Filed 3rd-pty. Deft. Southbridge Towers, Inc. ANSWER to 3rd-pty. complaint, Counterclaim & Cross-Claim.

Sept. 16 Filed 3rd-pty. deft's ANSWER to Cross-Claim.

Oct. 17 Filed 3rd-pty. Deft. Chutes Assoc. Corp. ANSWER to Cross Complaint, of 3rd-pty. Deft. Southbridge Towers, Inc.

RELEVANT DOCKET ENTRIES

1974

Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Industries Interrogs. to be answered by Deft.
Oct. 31	Filed Auto Pak Division of Flinchbough Products, etc.
Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Industries interrogs. to be answered by 3rd-pty. Deft. Charter Compacting Corp.
Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Industries interrogs. to be answered by 3rd-pty. Deft. Southbridge Towers, Inc.
Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Industries interrogs. to be answered by Deft. S & C Liquidating Corp.
Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Ind. interrogs. to be answered by Deft. Arthur Content.
Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Ind. interrogs. to be answered by pltffs.
Oct. 31	Filed 3rd-pty. Deft. Universal Commercial Ind. interrogs. to be answered by 3rd-pty. deft. Chutes Assoc. Corp.
Oct. 31	Filed 3rd-pty. Deft. Universal commercial Industries interrogs. to be answered by Defts. & 3rd-pty. Pltffs.
Oct. 23	Filed 3rd-pty. Pltffs. ANSWER to Cross-Claim.
Dec. 2	Filed Answers of interrogs. of Southbridge Towers, Inc. to interrogs. to be answered by pltffs. Auto Pak Co., Inc. and Albert Shayne.
Dec. 20	Filed Deft. & 3rd-pty. Pltff. Gulf & Western Mfg. Co. Systems ANSWER to cross-complaint to 3rd-pty. deft. Chutes Assoc. Corp.
Dec. 20	Filed Deft. & 3rd-pty. Pltff, Gulf & Western Mfg. Co. Systems Answer to cross-complaint of 3rd-pty. deft. Universal Commercial Industries.

RELEVANT DOCKET ENTRIES

1975

Jan. 2	Filed Pltffs. requests to charge jury.
Jan. 20	Filed Pltffs. Charge to Jury.
Feb. 26	Filed transcript, proceedings, dated 2/13/75.
Feb. 3	Trial begun before Tyler, J. with jury (on liability issue only).
Feb. 4	Trial begun before Tyler, J. with jury (on liability issue only).
Feb. 5	Trial begun before Tyler, J. with jury (on liability issue only).
Feb. 6	Trial begun before Tyler, J. with jury (on liability issue only).
Feb. 10	Trial begun before Tyler, J. with jury (on liability issue only).
Feb. 11	Trial begun before Tyler, J. with jury (on liability issue only).
Feb. 13	Trial begun before Tyler, J. with jury (on liability issue only). Question of amt. of money damages to be referred to magistrate for possible settlement, Jury verdict for pltff. on issue of liability only.
Mar. 25	Filed OPINION & Motion to grant judgment n.o.v. to Auto Pak is granted. It follows #42095 from this conclusion that 3rd-pty. claim over and courts decision thereon must fall. SETTLE ORDER AND JUDGMENT accordingly. Tyler, J.(mn).
Apr. 22	Filed JUDGMENT - Ordered that the deft. 3rd-pty. pltff. Auto Pak Co. Inc. have judgment notwithstanding the verdict in its favor against the pltff. Felix Merced dismissing the complaint, with costs to be taxed and that the third-party deft. Southbridge Towers, Inc. have judgment in its favor dismissing the third-party complaint as against the deft. and third-party pltff. Auto Pak Co., Inc. Edelstein, Ch. J. Judgment entered Clerk (mn).

RELEVANT DOCKET ENTRIES

1975

May 6	Filed Pltffs. Notice of Appeal from judgment entered dismissing pltff's complaint from each and every part of judgment. (Mailed notice to Morris, Duffy, Ivone & Jensen, J. Robert Morris, Benjamin E. Gelerman, McLaughlin & Lawler, Wynne, Sparacio, Capriano & Trentalange & Nicholas D'Onofrio, Esqs. on 5/6/75)

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

FELIX MERCED and MODESTA MERCED,

Plaintiffs,

against

AUTO PAK COMPANY, INC.,

Defendant.

Docket #2095.

Cal. No. 73C 1621.

HON. HAROLD R. TYLER, JR.

- -X

AUTO PAK COMPANY, INC.,

Third-Party Plaintiff,

against

SOUTHBRIDGE TOWERS, INC.,

Third-Party Defendant.

- -X

SIRS:

PLEASE TAKE NOTICE that the above named plaintiffs hereby appeal to the United States Court of Appeals, for the Second Circuit from a judgment entered against them in the office of the Clerk of the United States

NOTICE OF APPEAL

District Court, Southern District of New York, dismissing the plaintiffs' complaint, and this appeal is from each and every part of said judgment.

DATED: New York, New York
May 1, 1975

Yours, etc.

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Charter Compacting Corp.
123 William Street
New York, New York

JUDGMENT APPEALED FROM.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLES

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HAROLD R. TYLER, JR.:

The issues in the above entitled action having duly come on for trial before Honorable Harold R. Tyler, Jr., United States District Court Judge, and a jury, held at the Courthouse, Foley Square, City and State of New York, upon the 3rd, 4th, 5th, 6th, 10th, and 11th days of February, 1975, and all parties having appeared by counsel, and the claim of plaintiff MODESTA MERCED having been abandoned during trial, and the third-party complaint having been discontinued as against CHUTES ASSOCIATES CORP., without interest, cost or disbursements, and the third-party complaint against UNIVERSAL THERMAL INDUSTRIES INC. and CHARTER COMPACTING CORP. having been dismissed during trial, and the plaintiffs' complaint against AUTO PAK DIVISION of FLINCHBOUGH PRODUCTS, Division of GULF and WESTERN SYSTEMS CO., having been dismissed during trial, and the issue of liability only having been tried, and the jury having been given the

JUDGMENT APPEALED FROM

issue of liability as between the plaintiff FELIX MERCED and defendant AUTO PAK COMPANY, INC. only, and the parties having stipulated to reserve for the court as to the issue of liability as between the third-party plaintiff AUTO PAK COMPANY, INC. and the third-party defendant SOUTHBRIDGE TOWER INC., and the jury having rendered a verdict in favor of the plaintiff FELIX MERCED against the defendant AUTO PAK COMPANY, INC., and the court having ruled, as between the third-party plaintiff AUTO PAK COMPANY, INC. and the third-party defendant SOUTHBRIDGE TOWERS, INC. that SOUTHBRIDGE TOWERS INC. was liable for contribution of 40 percent of any damages assessed against AUTO PAK COMPANY, INC. in favor of the plaintiff, and the defendant AUTO PAK COMPANY INC. having moved to dismiss the plaintiffs' complaint and having moved for a judgment notwithstanding the verdict, and after due deliberation and pursuant to the Memorandum Decision filed March 25, 1975, the court having granted the motion for judgment notwithstanding the verdict and dismissing the plaintiff complaint, and, further, the plaintiffs' complaint having been dismissed, the third-party claim over by the defendant and third-party plaintiff AUTO PAK COMPANY INC. as against the third-party defendant SOUTHBRIDGE TOWERS, INC. is necessarily dismissed,

JUDGMENT APPEALED FROM

Now, on motion of MORRIS, DUFFY, IVONE & JENSEN, of 233 Broadway, New York, New York, attorneys for the defendant and third-party plaintiff AUTO PAK COMPANY INC., it is

ADJUDGED, ORDERED AND DECREED, that the defendant and third-party plaintiff AUTO PAK COMPANY INC. of Bladensburg, Maryland, have judgment notwithstanding the verdict in its favor against the plaintiff FELIX MERCED of 55 Rutgers Street, New York, New York, dismissing the complaint, with costs to be taxed, and it is further,

ADJUDGED, ORDERED AND DECREED, that the third-party defendant SOUTHBRIDGE TOWERS, INC., 50 Gold Street, New York, New York, have judgment in its favor dismissing the third-party complaint as against the defendant and third-party plaintiff AUTO COMPANY INC.

DATED: New York, New York
April 14, 1975

s/RAYMOND F. BURGHARDT
Clerk

DECISION BY TYLER, J.

UNITED STATED DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLES

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TYLER, D.J.:

The motion of defendant Auto Pak Company, Inc. for judgment n.o.v., pursuant to Rule 50, F.R. Civ. P., is granted for reasons to be discussed hereinafter.

The issues of breach of implied warranty and negligence in this case were tried to a jury in a six day trial in February, 1975. By agreement, only the issues of liability were put to the jury in the first instance. The instructions of the court put the case to the jury on two theories, negligence and breach of implied warranty, basically in accordance with the New York Pattern Jury Instructions. The court also asked the jury to answer special questions in addition to returning a general verdict on liability. The ten special questions comported with the jury's general verdict in favor of the plaintiff. Moreover, with comparative specificity, the jury in its answers to the special questions refused to find contributory negligence on the part of plaintiff and indicated the bases on which they found manufacturers

liability on the part of Auto Pak. The plaintiff, a porter at Southbridge Towers, a modern apartment complex in Manhattan, lost his hand when he inserted the arm and the upper part of his body into a garbage compactor manufactured by Auto Pak and known by the trade name and model, "Gobbler 16".

After the jury returned its verdict, the court made final rulings dismissing other named defendants from the case, either on the basis of consent or because there was no proof indicating that any of the other defendants had any involvement or liability.[1] By agreement, the remaining parties in the third-party action, Auto Pak and Southbridge Towers, Inc., the owner of the apartment complex, agreed to try the third-party claim issues to the court. Thereafter, the court ruled that, under the New York "contribution theory", see *Dole v. Dow Chemical Company*, 30 N. Y. 2d 143, 331 N. Y. S. 2d 382 (1972), Southbridge Towers was liable for contribution of 40% of any damages assessed against Auto Pak in favor of the plaintiff. In the meantime, again by agreement, the jury had been excused with the intention of trying out the issues of

1 At trial, the claim of plaintiff Modesta Merced, wife of injured plaintiff, was abandoned.

damages later, if need be, before a separate jury. Finally, the court indicated that it would take briefs on the motions of defendant Auto Pak to dismiss and for judgment n.o.v.

In full recognition that a jury verdict should not be lightly disturbed, my review of the record and the briefs indicates that, in light of applicable New York law, the verdict was against the weight of the evidence and did not support the finding by a reasonable fact finder of manufacturer's liability on the part of Auto Pak. Consequently, the court grants the motion of Auto Pak, which is therefore entitled to a judgment dismissing the complaint. From this, it follows that the third-party complaint against Southbridge Towers must also fall.

The reasons for this conclusion can be summarized as follows:

1. Analysis of the plaintiff's testimony alone suggests, at the very least, that he, as a reasonably experienced porter at the apartment complex, was well aware of the dangers of putting any portion of his body through the door into the compacting chamber. The compactor ram was openly and obviously a potentially extremely dangerous piece of machinery. Moreover, even though it was difficult to be sure of what plaintiff meant by some of his testimony,

he admitted that, previous to this accident, he was aware that bottles and other objects coming down the garbage chute could and did bounce off the deflection plate. Also, plaintiff was well aware of the practice of using stout sticks to break blockages in the chamber of the Gobbler ram. Therefore, it seems beyond serious dispute not only that plaintiff was guilty of negligence or carelessness on his part but, perhaps more importantly, that he was not one for whom the dangers of usage amounted to a latent or cancealed defect.

2. It is still the law of New York that a manufacturer, such as Auto Pak, owes to remote users, such as plaintiff, a duty merely to make a device, such as the Gobbler, "free from latent defects and concealed dangers." *Compo v. Scofield*, 301 N. Y. 468 at 471 (1950). In my view, no reasonable fact finder could conclude that the occurrence of garbage blockages was a latent or concealed danger or risk to a person's physical integrity.

3. It is true that at trial plaintiff's expert endeavored to make much of the fact that no printed notices appeared on the machine to warn of the danger of putting one's hands or limbs inside the door without the power cut off. Certainly, at least as far as Merced is concerned, such a notice would have been a superfluity.

DECISION BY TYLER, J.

4. In regard to plaintiff's claim of breach of warranty, I conclude that there was no satisfactory evidence to support the jury's negative answer to the special question: "When Auto Pak put the machine in question on the market, was it defective and unfit for use for its ordinary purpose?" Even if the fact that garbage blockages occurred were to be considered a latent design defect, the injury sustained here could not be considered proximately caused by that defect.

Put differently, the established fact that blockages of garbage occasionally occurred does not indicate that the machine itself was defective. It is unquestionable in retrospect that the machine could have been designed with more safety features and in such a way that "bridging" of the garbage did not occur in the chute; but, under New York law, the manufacturer was under no legal duty to design the compactor to incorporate such safety and efficiency features. See *Campo v. Scofield*, *supra*, at 473-75; *Bolm v. Triumph Corp.*, 33 N. Y. 2d 151, 156-59 (1973).

Accordingly, the motion to grant judgment n.o.v. to Auto Pak is granted. It follows from this conclusion that the third-party claim over and the court's decision thereon must fall. Settle order and judgment accordingly.

DATED: March 31, 1975

H. R. TYLER, JR.
U. S. D. J.

COURT'S EXHIBIT 1--BREACH OF IMPLIED WARRANTY THEORY.

1. On July 13, 1972, did plaintiff operate the machine in an unreasonable or unsafe manner?

No.
(Yes or No)

2. If your answer to "1" is "yes", did such operation on plaintiff's part proximately cause his accident?

--
(Yes or No)

3. When Auto Pak put the machine in question on the market, was it defective and unfit to be used for its intended purpose?

Yes.
(Yes or No)

4. If your answer to "3" is "yes", describe briefly in what respect you so find.

Please *see attached sheet to Negligence Theory* and furthermore, the machine should have been provided with additional safeguards such as an interlock on the Hopper door.

5. If your answer to "3" is "yes", did such condition proximately cause plaintiff's accident?

Yes.
(Yes or No)

COURT'S EXHIBIT 1

NEGLIGENCE THEORY.

1. Was plaintiff negligent on July 13, 1972 in the operation of the machine?

No.
(Yes or No)

2. If your answer to "1" is "yes", did such negligence proximately cause plaintiff's injury?

--
(Yes or No)

3. Was the Gobbler #16 machine in Building No 7 negligently designed or manufactured?

Yes.
(Yes or No)

4. If your answer to "3" is "yes", describe briefly the negligent manufacture and/or design which you determine.

A mechanical device to avoid "bridging" was not incorporated in the design; therefore, machine could not function as "automatic" but required frequent manual assistance. Also, no protection was afforded from objects ricocheting from deflection plate when hopper door was open.

5. If your answer to "3" is "yes", did such negligence proximately cause plaintiff's accident?

Yes.
(Yes or No)

COMPLAINT.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

FELIX MERCED and MODESTA MERCED,

Plaintiffs,

against

AUTO PAK COMPANY, INC., S & C LIQUIDATING CORP., AUTO PAK, DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., ALBERT SHAYNE and ARTHUR CONTENT,

Defendants.

3 Civ. 1621

- -X

Plaintiffs, complaining of the defendants, by KATZ, SHANDELL, KATZ & ERASMOUS, ESQS., their attorneys, respectfully allege as follows:

AS AND FOR A FIRST CLAIM FOR RELIEF FOR PERSONAL INJURIES SUSTAINED BY FELIX MERCED, PLAINTIFF, DUE TO THE NEGLIGENCE OF DEFENDANTS:

1. Plaintiffs are citizens of New York State.

2. Defendants are foreign corporations, having their principal places of business outside the State of New York, or are citizens of a state other than New York.

3. The matter in controversy exceeds the sum of TEN THOUSAND ($10,000.00) DOLLARS, exclusive of interest and costs.

COMPLAINT

4. Prior to July 13, 1972 defendants designed, repaired, manufactured, assembled, distributed, sold and installed a certain Auto Pak Gobbler refuse compactor (hereinafter designated as "Compactor").

5. Prior to July 12, 1972, said Compactor was purchased from defendants by or on behalf of Southbridge Towers, the employer of plaintiff, FELIX MERCED, for the purpose of compacting refuse in a residential building.

6. That on or about the 13th day of July, 1972 and while said plaintiff was engaged in the course of his employment in the operation of the aforesaid Compactor, located in Wing 7 of Southbridge Towers at 90 Beekman Street, New York, New York, he was severly injured by said Compactor.

7. As a result thereof, plaintiff, FELIX MERCED, sustained serious and permanent injuries to his arm and various other parts of his body; suffered and continues to suffer great pain of body and mind; was and will be compelled to expend large sums of money for hospital and medical care; and was and has been permenently prevented from properly attending to his usual occupation activities and duties and has suffered great monetary loss thereby.

8. The foregoing occurrence, injuries and damage were caused solely by reason of the negligence of the defendants and/or their predecessors in interest in the design, manufacture, construction, assembly, repair, servicing and installation of such contractor and by reason of their failure to properly inspect or test the same Compactor before selling the same to plaintiff, FELIX MERCED's employer and in being otherwise negligent and careless in the premises.

9. The foregoing occurrence, injuries and damage and the injuries resulting therefrom were caused through no fault, carelessness or negligence on the part of plaintiff.

10. That as a result of the foregoing, plaintiff has been damaged in the sum of TWO MILLION ($2,000,000.00) DOLLARS.

AS AND FOR A SECOND CLAIM FOR RELIEF OF PERSONAL INJURIES SUSTAINED BY PLAINTIFF FELIX MERCED DUE TO BREACH OF IMPLIED WARRANTY BY DEFENDANTS.

11. Plaintiff, FELIX MERCED, repeats and realleges each and every allegation contained in the paragraphs of this complaint designated "1" through "6", inclusive, with the same force and effect as though the same were here now fully set forth at length.

COMPLAINT

12. That at the time of the manufacture, sale and installation of the aforesaid refuse Compactor by said defendants, defendants had full knowledge that the said Compactor would be used for the purposes for which it was intended and said defendants, their predecessors and interest, their agents, servants or employees, represented and warranted to plaintiff's employer, and to any other potential, ultimate user of said Compactor, that said Compactor was safe, suitable and fit for all purposes intented for the same; and that said Compactor was in a good, safe, fit and merchantable condition.

13. Plaintiff and his employer relied upon the knowledge judgment and skill of the defendants and/or their predecessors in interest in the manufacture, design, consturction, assembly and installation of said Compactor and the selection and use of strong suitable, adequate, safe and proper material and mechanism.

14. Plaintiff and his employer relied upon the representations, knowledge, judgment and skill of the defendants in the installation, inspection and testing of said Compactor.

15. Contrary to representations and warranties of defendants and their predecessors, said refuse Compactor had not been adequately tested and was not free from dangerous and latent defects in the design, manufacture, construction, assembly and installation and repair thereof.

16. Defendants and/or their predecessors violated and breached said warranties and said Compactor was not of good quality, was not free from defects, was not fit or merchantable, was not fit or suitable for all purposes intended, and was not designed, assembled, in a good, safe and proper manner and was not manufactured, assembled, installed or repaired in a good, safe and fit manner or with good, safe, fit or merchantable components.

17. The fact that said Compactor was not merchantable, unfit for the purposes intended and had latent defects therein could not be discovered by plaintiff, FELIX MERCED.

18. As a result of the defendants' breach of their implied warranties, while plaintiff, FELIX MERCED, was operating said Compactor, plaintiff was caused to be severely, thoroughly and permanently injured; suffered and continues to suffer great bodily harm and mental anguish; has been prevented from returning to his usual vocation for a long period of time and will in the future be incapacitated from properly attending to his occupation and normal acitvities; was and will be compelled to spend large sums of money for medical aid and attention and has suffered great monetary loss thereby.

19. As a result of the foregoing, plaintiff has been damaged in the sum of TWO MILLION ($2,000,000.00) DOLLARS.

COMPLAINT

AS AND FOR A THIRD CAUSE OF ACTION FOR RELIEF OF PERSONAL INJURIES SUSTAINED BY PLAINTIFF, FELIX MERCED, BASED UPON THE STRICT LIABILITY OF DEFENDANTS:

20. Plaintiff, FELIX MERCED, repeats and realleges each and every allegation contained in the paragraphs of this complaint designated "1" through "6", inclusive, and "12" through "17", inclusive, with the same force and effect as though the same were here now fully set forth at length.

21. In connection with the manufacturer, design, assembly distribution and sale of the Compactor, defendants are strictly liable for injuries and damages that resulted to a user thereof.

22. As a result of the foregoing, plaintiff, FELIX MERCED, suffered serious and permanent injuries to his body; suffered great pain of body and mind; was compelled to expend large sums of money for hospital and medical care; and was and has been permanently prevented from properly attending to his usual occupation, activities and duties.

23. By reason of the foregoing, plaintiff has been damaged in the sum of TWO MILLION ($2,000,000.00) DOLLARS.

COMPLAINT

AS AND FOR A FOURTH CLAIM FOR RELIEF ON BEHALF OF PLAINTIFF, FELIX MERCED, FOR BREACH OF EXPRESS WARRANTY:

24. Plaintiff, FELIX MERCED, repeats and realleges each and every allegation set forth in the paragraphs of this complaint designated "1" through "6", inclusive, with the same force and effect as though the same were here now fully set forth at length.

25. When plaintiff's employer purchased the said Compactor herein, defendants and/or their predecessors did warrant to said employer that the Compactor was designed, manufactured, constructed, assembled, installed, tested and inspected in a proper, suitable, adequate and safe manner, and would ramain so for several years; and further warranted that the said Compactor was safe and fit for the use and purposes for which it was made, and that it would hold up under normal use without breaking, and that the same had been equipped with safety devices which would protect employees of said employer, which would include the plaintiff, and that the same was free from defects.

26. Plaintiff's employer accepted and purchased said Compactor in reliance on defendants' representations and express warranties and the plaintiff used the Compactor in reliance upon the promises and warranties made by the defendants and/or their predecessors herein.

27. Plaintiff, when using said Compactor, relied upon the express warranty and had no knowledge of any latent defects, inadequacy or deficiency in the design, manufacture, processing, assembly, installation, and repair of said Compactor.

28. Contrary to said representations and express warranties of defendants, hereinabove alleged, said Compactor was defective in its design, construction, manufacture, assembly and installation; was unfit for the purpose for which it was intended; lacked adequate or proper safety equipment; was not manufactured with good, safe, fit and merchantable components; and did not function properly or safely while plaintiff was lawfully operating same.

29. As a result of defendants' breach of warranty, plaintiff, FELIX MERCED, sustained serious and permanent injuries, suffered and continues to suffer great bodily harm and anguish; has been prevented from attending to his usual vocation for a long period of time and will in the future be incapacitated from properly attending to his occupation and norrnal activities; was and will be compelled to spend large sums of money for medical aid and attention and has suffered great monetary loss thereby.

30. As a result of the foregoing, plaintiff has been damaged in the sum of TWO MILLION ($2,000,000.00) DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION FOR RELIEF ON BEHALF OF PLAINTIFF, MODESTA MERCED, FOR DAMAGES FOR LOSS OF SERVICES, CONSORTIUM, COMPANIONSHIP AND SUPPORT OF PLAINTIFF, FELIX MERCED, DUE TO THE TORTIOUS CONDUCT OF DEFENDANTS.

31. Plaintiff MODESTA MERCED, repeats and realleges each and every allegation set forth in the paragraphs of this complaint designated "1" through "6", inclusive, with the same force and effect as though the same were here now fully set forth at length.

32. At all times herein mentioned plaintiffs herein were and still are husband and wife residing together.

33. By reason of the foregoing, plaintiff, MODESTA MERCED, has been deprived of the services, consortium, society, companionship and support of her husband, plaintiff, FELIX MERCED, and his ability to render such services to this plaintiff has been permanently impaired.

34. By reason of the foregoing, plaintiff, MODESTA MERCED, has been damaged in the sum of THREE HUNDRED AND FIFTY THOUSAND ($350,000.00) DOLLARS.

WHEREFORE, plaintiffs demand judgment against the defendants as follows: On the first claim for relief on behalf of plaintiff, FELIX MERCED, the sum of

TWO MILLION ($2,000,000.00) DOLLARS; on the second claim for relief on behalf of plaintiff, FELIX MERCED, the sum of TWO MILLION ($2,000,000.00) DOLLARS; and on the third claim for relief on behalf of plaintiff, FELIX MERCED, the sum of TWO MILLION ($2,000,000.00) DOLLARS; on the fourth claim for relief on behalf of plaintiff, FELIX MERCED, the sum of TWO MILLION ($2,000,000.00) DOLLARS; and on the fifth claim for relief on behalf of plaintiff, MODESTA MERCED, the sum of THREE HUNDRED AND FIFTY THOUSAND ($350,000.00) DOLLARS; all together with the costs and disbursements of this action.

KATZ, SHANDELL, KATZ & ERASMOUS
Attorneys for Plaintiffs
Office & P.O. Address
135 William Street
New York, New York 10038
(212) 227-0001

BY: s/HERBERT W. KATZ

ANSWER OF DEFENDANTS ALBERT SHAYNE AND AUTO PAK COMPANY, INC.

UNITED STATED DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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The defendants, ALBERT SHAYNE and AUTO PAK COMPANY, INC. by their attorneys, MORRIS, DUFFY, IVONE & JENSEN, upon information and belief, answer the plaintiffs' Complaint herein as follows:

ANSWERING FIRST CAUSE OF ACTION:

FIRST: Deny any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in the paragraph or subdivision of the Complaint designated "1".

SECOND: Deny the allegations contained in the paragraph or subdivision of the Complaint designated "2" except admit ALBERT SHAYNE is a resident of the State of Maryland.

THIRD: Deny the allegations contained in the paragraphs or subdivisions of the Complaint designated "3", "4", "5", "6", "7", "8", "9", and "10".

ANSWER OF DEFENDANTS ALBERT SHAYNE AND
AUTO PAK COMPANY, INC.

ANSWERING SECOND CUASE OF ACTION:

FOURTH: As to paragraph of the Complaint designated "11", answering defendants repeat and reallege each and every denial heretofore made with respect to paragraphs "1" through "10" inclusive of the entire first cause of action, with the same force and effect as if fully set forth herein.

FIFTH: Deny the allegations contained in the paragraphs or subdivisions of the Complaint designated "12", "13", "14", "15", "16", "17", "18" and "19".

ANSWERING THIRD CAUSE OF ACTION:

SIXTH: As to paragraph of the Complaint designated "20", answering defendants repeat and reallege each and every denial heretofore made with respect to paragraphs "1" through "19" inclusive of the entire first and second causes of action, with the same force and effect as if fully set forth at length herein.

SEVENTH: Deny the allegations contained in the paragraphs or subdivisions of the Compalint designated "21", "22" and "23".

ANSWER OF DEFENDANTS ALBERT SHAYNE AND AUTO PAK COMPANY, INC.

ANSWERING FOURTH CAUSE OF ACTION:

EIGHTH: As to paragraph of the Compalint designated "24", answering defendants repeat and reallege each and every denial heretofore made with respect to paragraphs "1" through "23" inclusive of the entire first through third causes of action, with the same force and effect as if fully set forth at length herein.

NINTH: Deny the allegations contained in the paragraphs or subdivisions of the Complaint designated "25", "26", "27", "28", "29" and "30".

ANSWERING FIFTH CAUSE OF ACTION:

TENTH: As to paragraph of the complaint designated "31", answering defendants repeat and reallege each and every denial heretofore made with respect to paragraphs "1" through "30" inclusive of the entire first through fourth causes of action, with the same force and effect as if fully set forth at length herein.

ELEVENTH: Denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in the paragraph or subdivision of the Complaint designated "32".

ANSWER OF DEFENDANTS ALBERT SHAYNE AND AUTO PAK COMPANY, INC.

TWELFTH: Deny the allegations contained in the paragraphs or subdivisions of the Complaint designated "33" and "34".

AS AND FOR A FIRST SEPARATE COMPLETE AND DISTINCT AFFIRMATIVE DEFENSE TO THE PLAINTIFFS' COMPLAINT, DEFENDANTS, ALBERT SHAYNE AND AUTO PAK COMPANY, NC. ALLEGE:

THIRTEENTH: Any damages which may have been sustained by the plaintiffs were caused or contributed to by reason of the negligence of Felix Merced or Modesta Merced.

AS AND FOR A SECOND DEPARATE COMPLETE AND DISTINCT AFFIRMATIVE DEFENSE TO THE PLAINTIFFS' COMPLAINT, DEFENDANTS ALBERT SHAYNE AND AUTO PAK COMPANY, NC. ALLEGE:

FOURTEENTH: That the lawsuit was not commenced by the plaintiffs within the time prescribed by law, and plaintiff, therefore, are barred from recovery.

AS AND FOR A THIRD SEPARATE COMPLETE AND DISTINCT AFFIRMATIVE DEFENSE TO THE PLAINTIFFS' COMPLAINT, DEFENDANTS ALBERT SHAYNE AND AUTO PAK COMPANY, NC. ALLEGE:

FIFTEENTH: That the Court has no jurisdiction over the defendants herein.

ANSWER OF DEFENDANTS ALBERT SHAYNE AND
AUTO PAK COMPANY, INC.

WHEREFORE, defendants, ALBERT SHAYNE and AUTO PAK COMPANY, INC. demand judgment dismissing the plaintiffs' Complaint, together with the costs and disbursements of this action.

s/JOHN E. MORRIS
MORRIS, DUFFY, IVONE & JENSEN
Attorneys for Defendants
Albert Shayne & Auto Pak
Company, Inc.
233 Broadway
New York, New York 10007

THIRD-PARTY COMPLAINT.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

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The third-party plaintiffs by their attorneys, MORRIS, DUFFY, IVONE & JENSEN, complaining of the impleaded third-party defendants, allege as follows, upon information and belief:

FIRST: That some time prior to July 13, 1972, the third-party plaintiff, AUTO PAK COMPANY, INC., was engaged in the business of designing and selling machines known as refuse compactors.

SECOND: That the third-party plaintiff, ALBERT SHAYNE, was President of the aforesaid corporation.

THIRD: That some time heretofore, the plaintiff, FELIX MERCED, commenced an action in this Court against the aforesaid third-party plaintiffs.

FOURTH: That annexed hereto and made a part hereof are copies of plaintiffs' summons and complaint and the answers of the defendants-third-party plaintiffs in this action to which third-party plaintiffs beg leave to refer as if fully set forth at length herein.

THIRD-PARTY COMPLAINT

FIFTH: That on July 13, 1972, plaintiff, FELIX MERCED, was an employee of the third-party defendant, SOUTHBRIDGE TOWERS, INC., which was the owner of certain refuse compactors.

SIXTH: That for some period of time, and prior to July 13, 1972, the third-party defendant, UNIVERSAL THERMAL INDUSTRIES, INC., was in the business of distributing, selling, servicing and installing refuse compactors.

SEVENTH: That some time prior to July 13, 1972, said third-party defendant, UNIVERSAL THERMAL INDUSTRIES, INC., by its agents, servants and/or employees sold to third-party defendant, SOUTHBRIDGE TOWERS, INC., and installed and provided certain service in connection therewith, refuse compactors at premises known as SOUTHBRIDGE TOWERS, located in New York, N. Y.

EIGHTH: That some time prior to July 13, 1972, the third-party defendant, CHUTES ASSOCIATES CORP., by its agents, servants and/or employees provided services and maintenance for the aforesaid refuse compactors located at the premises known as SOUTHBRIDGE TOWERS, New York, N. Y.

NINTH: That some time prior to July 13, 1972, the third-party defendant, CHARTER COMPACTING CORP.,

by its agents, servants and/or employees provided services and maintenance for the aforesaid refuse compactors located at the premises known as SOUTHBRIDGE TOWERS, New York, N. Y.

TENTH: That the certain refuse compactor referred to in plaintiffs' complaint and which it is alleged was a cause of the injuries sustained by plaintiff, FELIX MERCED, was owned, operated, controlled, installed, serviced, managed and maintained by the third-party defendants, their agents, servants and/or employees.

ELEVENTH: That if the plaintiff, FELIX MERCED, sustained injuries and damages at the time and place set forth and in the manner alleged in his complaint, other than by his own carelessness, recklessness and negligence, then the same was caused solely by reason of the active and primary negligence and/or acts of omission or commission of the third-party defendants, their agents, servants and/or employees, and if any verdict or judgment is recovered herein by the plaintiffs against the third-party plaintiffs the third-party plaintiffs will be damaged thereby and the third-party defendants will be responsible therefor.

TWELFTH: That by reason of the foregoing, the third-party defendants are or will be liable to and bound to

indemnify the third-pa-ty plaintiffs in the event of a recovery herein by the plaintiffs against the third-party plaintiffs to the extent that the third-party defendants are fully or proportionately responsible and liable for the occurrence and consequences thereof as alleged by the plaintiffs herein.

WHEREFORE, the third-party plaintiffs demand that the ultimate rights of the third-party plaintiffs and the impleaded third-party defendants in this action, as between themselves, be determined in this action, and that the third-party plaintiffs have judgment over and against the third-party defendants for the full or proportionately determined amount of any judgment or verdict which may be obtained by the plaintiffs against the third-party plaintiffs, together with the costs and disbursements of this action.

MORRIS, DUFFY, IVONE & JENSEN
Attorneys for Third-Party
Plaintiffs
Office & P.O. Address
233 Broadway
New York, N. Y. 10007
(212) WO 2 5664

BY: JOHN E. MORRIS
Member of the firm

ANSWER OF DEFENDANT SOUTHBRIDGE TOWERS, INC. TO THIRD-PARTY COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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Third-party defendant SOUTHBRIDGE TOWERS, INC., demands a trial by jury.

The third-party defendant, SOUTHBRIDGE TOWERS, INC., by its attorney, BENJAMIN E. GELERMAN, answering the third-party plaintiffs' complaint herein, upon information and belief:

FIRST: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "FIRST", "SECOND", "THIRD", "FOURTH", "SIXTH" and "EIGHTH" of the third-party plaintiffs' complaint herein.

SECOND: Denies each and every allegation contained in paragraph marked "SEVENTH", "ELEVENTH" and "TWELFTH" of the third-party plaintiffs' complaint herein.

THIRD: Denies each and every allegation contained in paragraph marked "TENTH" of the third-party plaintiffs' complaint herein except admits third-party defendant SOUTHBRIDGE TOWERS, INC. owned compactors in its premises.

ANSWER OF DEFENDANT SOUTHBRIDGE TOWERS, INC. TO THIRD-PARTY COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM

AS AND FOR AN AFFIRMATIVE DEFENSE, MERELY FOR THE PURPOSE OF PLEADING AND WITHOUT ASSUMING THE BURDEN OF PROOF AT THE TRIAL, THE THIRD-PARTY DEFENDANT, SOUTHBRIDGE TOWERS, INC., ALLEGES:

FOURTH: Whatever injuries and damages were sustained by plaintiffs as a result of the occurrence as alleged in the complaint herein were caused in whole or in part or were contributed to by reason of the negligence of the plaintiffs.

AS AND FOR A COUNTERCLAIM AGAINST THE THIRD-PARTY PLAINTIFFS, AUTO PAK COMPANY, INC. AND ALBERT SHAYNE AND A CROSS-CLAIM AGAINST THE DEFENDANTS S & C LIQUIDATING CORP., AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO. AND ARTHUR CONTENT, AND THIRD-PARTY DEFENDANTS, UNIVERSAL THERMAL INDUSTRIES INC., CHUTES ASSOCIATES CORP. AND CHARTER COMPACTING CORP., THE THIRD-PARTY DEFENDANT, SOUTHBRIDGE TOWERS, INC., ALLEGES, UPON INFORMATION AND BELIEF:

FIFTH: If it is found that the third-party defendant, SOUTHBRIDGE TOWERS, INC., is liable herein, then on the basis of apportionment of responsibility for the alleged occurrence, and third-party defendant, SOUTHBRIDGE TOWERS, INC., is by reason of negligence entitled to indemnification from and judgment over against the aforementioned AUTO PAK COMPANY, INC., ALBERT SHAYNE, S & C LIQUIDATING CORP., AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO.,

ANSWER OF DEFENDANT SOUTHBRIDGE TOWERS, INC. TO THIRD-PARTY COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM

ARTHUR CONTENT, UNIVERSAL THERMAL INDUSTRIES INC., CHUTES ASSOCIATES CORP. and CHARTER COMPACTING CORP., for all or part of any verdict or judgment that may be recovered against said third-party defendant, SOUTHBRIDGE TOWERS, INC.

SIXTH: By reason of this action, the third-party defendant, SOUTHBRIDGE TOWERS, INC., has been and will be put to costs and expenses, including attorneys' fees.

AS AND FOR A SECOND COUNTERCLAIM AGAINST THE THIRD-PARTY PLAINTIFFS, AUTO PAK COMPANY, INC. AND ALBERT SHAYNE, AND AS AND FOR A SECOND CROSS-CLAIM AGAINST DEFENDANT, AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., THIRD-PARTY DEFENDANT, SOUTHBRIDGE TOWERS, INC., ALLEGES, UPON INFORMATION AND BELIEF:

SEVENTH: If it is found that the third-party defendant, SOUTHBRIDGE TOWERS, INC., is liable herein, then on the basis of apportionment of responsibility for the alleged occurrence, said third-party defendant, SOUTHBRIDGE TOWERS, INC., is by reason of breach of warranties and strict liability in tort entitled to indemnification from and judgment over against the aforementioned AUTO PAK COMPANY, INC., ALBERT SHAYNE and AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., for all or part of any verdict or judgment that may be recovered against said third-party defendant, SOUTHBRIDGE TOWERS, INC.

ANSWER OF DEFENDANT SOUTHBRIDGE TOWERS, INC. TO THIRD-PARTY COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM

EIGHTH: By reason of this action, the third-party defendant, SOUTHBRIDGE TOWERS, INC., has been and will be put to costs and expenses, including attorneys' fees.

WHEREFORE, the third-party defendant, SOUTHBRIDGE TOWERS, INC., demands judgment dismissing the third-party complaint against it, together with the cost and disbursements of this action, and further demands that in the event said third-party defendant is found liable herein, then said third-party defendant on the basis of apportionment of responsibility, have judgment over against the third-party plaintiffs, AUTO PAK COMPANY, INC. and ALBERT SHAYNE, the defendants, S & C LIQUIDATING CORP., AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO. and ARTHUR CONTENT, and third-party defendants, UNIVERSAL THERMAL INDUSTRIES INC., CHUTES ASSOCIATES CORP. and CHARTER COMPACTING CORP., for all or part of the verdict or judgment that may be recovered against the third-party defendant, together with the costs and disbursements of this action, and for any expenses incurred by it in the defense thereof, including attorneys' fees.

BENJAMIN E. GELERMAN
Attorney for Third-Party
Defendant
Southbridge Towers, Inc.

BY: LEO ROTHBARD
345 Adams Street
Brooklyn, New York 11201
(212) 643-8043

ANSWER OF THIRD-PARTY PLAINTIFFS TO COUNTERCLAIM OF THIRD-PARTY DEFENDANT, SOUTHBRIDGE TOWERS, INC.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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The answering third-party plaintiffs, AUTO PAK COMPANY, INC. and ALBERT SHAYNE, by its attorneys, MORRIS, DUFFY, IVONE & JENSEN, upon information and belief, answer the counterclaim of co-defendant, SOUTHBRIDGE TOWERS, INC., herein as follows:

ANSWERING THE FIRST COUNTERCLAIM

1. Deny the allegations contained in the paragraphs or subjivisions of the counterclaim designated "FIFTH" and "SIXTH".

ANSWERING THE SECOND COUNTERCLAIM

2. Deny the allegations contained in the paragraphs or subdivisions of the counterclaim designated "SEVENTH" and "EITHTH".

ANSWER OF THIRD-PARTY PLAINTIFFS TO COUNTERCLAIM OF THIRD-PARTY DEFENDANT, SOUTHBRIDGE TOWERS, INC.

WHEREFORE, the answering third-party plaintiffs, named above, demand judgment dismissing the counterclaim of third-party defendant, named above, together with the costs and disbursements of this action.

MORRIS, DUFFY, IVONE & JENSEN

BY: s/JOHN E. MORRIS
Member of the firm
Attorneys for third-party plaintiffs
Office & P. O. Address
233 Broadway
New York, New York
10007

TRANSCRIPT.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FELIX MERCED and MODESTA MERCED,

Plaintiffs,

v.

AUTO PAK COMPANY, INC., AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., ALBERT SHAYNE

73 Civ. 1621 HRT

Defendants,

AUTO PAK COMPANY, INC., & ALBERT SHAYNE,

Third-Party Plaintiffs,

v.

SOUTHBRIDGE TOWERS, INC., UNIVERSAL THERMAL INDUSTRIES, INC., CHUTES ASSOCIATES CORP. and CHARTER COMPACTING CORP.,

Third-Party Defendants.

BEFORE: Hon. Harold R. Tyler, Jr. D. J. and a Jury

February 3, 1975
10 A. M.
Room - 1506

rdcg

APPEARANCES:

RICHARD E. SHANDELL, ESQ.,
Attorney for the Plaintiffs,

MICHAEL IVONE, ESQ.,
Attorney for Defendant Auto Pak Company, Inc.
and the Third-Party Plaintiff,

J. ROBERT MORRIS, ESQ.,
BY: JAMES KOHLER, ESQ.,
Attorney for Defendant Auto Pak,
Division of Flinchbough, etc.
Of Counsel.

ALLEN H. ISAAC, ESQ.,
Attorney for Third-Party Defendant
Southbridge Towers, Inc.

WILLIAM REGAN, ESQ.,
Attorney for Third-Party Defendant
Universal Thermal

SAUL WILENSKY, ESQ.,
Attorney for Third-Party Defendant
Charter Compacting.

(Jury was duly empaneled and sworn.)

(All counsel opened to the jury.)

H A R R Y N E L S O N, called as a witness on behalf of the Plaintiff, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Nelson, are you associated with Southbridge Towers, Inc.?

A Yes, I am.

Q And in what capacity, sir?

A I am the general manager.

Q And as general manager of Southbridge Towers, Inc. what are your duties?

A I am in charge of all public relations, in charge of all staff, maintaining their work schedules, collection of rent.

Q Mr. Nelson, how long have you been working as general manager at Southbridge Towers?

A Going on five years.

Q Were you the general manager at Southbridge Towers when certain compactors were purchased?

A Yes I was.

Q From whom were they purchased?

A Auto Pak.

Q And that would be Auto Pak Company, Incorporated from Bladensburg, Maryland?

A I know Auto Pak. They were purchased by Tishman Construction.

Q Did there come a time when they were installed at Southbridge Towers?

A Yes.

Q By whom?

A You would have to refresh my memory.

Q Would that be Universal Thermal?

A Yes, that's correct.

Q Now, in connection with the purchase and installation of these compactors, sir, did you at Southbridge Towers ever get any written set of instructions on how to run them?

A Personally, myself?

Q You were the general manager, sir, weren't you?

A Yes. But I don't handle everything at Southbridge. I would have to say no, I never received it.

Q Do you know of any written set of instructions as to how to operate this machine that came either from Auto Pak or Universal Thermal?

A No, I don't.

Q Did anybody at Auto Pak ever give you any oral instructions as to how to operate this machine?

A From Auto Pak.

Q Auto Pak.

A No.

Q Did anybody at Universal Thermal ever give you -- Universal Thermal ever give you any oral instructions as to how to operate this machine?

A Yes, they did.

Q Who was it? Who at Universal?

A I do not know his name.

Q When was that?

A I would have to say our first building opened in November of '70. I would have to say just before the buildings opened in November of 1970.

Q Was this some conversation you had with this gentleman?

A No, it was with my supers on the job.

Q Were you present?

A No, I wasn't.

Q So you have no personal knowledge of any instruction that came from Universal Thermal about how this machine should be run; is that what you are saying?

A No, I'm not. I'm saying that my men, who would be

on the premises who would have to instruct their men on the operation, did get instructions from Thermal. I, myself, had many other duties. I did not have instruction myself.

Q Who was it that decided that this machine would be run from 8 in the morning, for a period in the morning, then in the early afternoon and then for a period in the evening; who decided that?

A This would be done by the superintendent, Mr. Herman.

THE COURT: Mr. whom?

THE WITNESS: Mr. Herman.

Q Did Mr. Herman ever discuss with you the manpower requirements for operating these compactors?

A Yes.

Q And what did he say to you and what did you say to him?

A Well, are you talking now about the hours that these machines would run?

Q Yes.

A Well, we felt in the low buildings -- we have two sets of buildings. We have low buildings, we have high rise. We felt that due to their being only 50 families in the low building it wouldn't require a full 8-hour operation.

In the high rise, where we had 352 tenants, roughly

a thousand people in the building, we felt it would have to be a continuous operation.

Q By continuous, what do you mean?

A 24 hours a day.

Q In other words, in the high rise buildings you would have a porter there two o'clock in the morning working this machine?

A At that time?

Q Yes.

A Are you talking now or then?

Q Then?

A We always and still have a porter on duty at night.

Q With the machine turned on?

A Yes.

Q In the smaller buildings you turned the machine off?

A No, we didn't turn the machine off. At that time we didn't have a full occupancy in that building.

Q Mr. Nelson, was it your practice back in 1972 to turn this machine off after a couple of hours in the morning, after a couple of hours in the afternoon, after a couple of hours in the evening?

MR. IVONE: Are we talking about the low rise or the high rise as well?

THE COURT: I wouldn't know.

MR. IVONE: I am voicing an objection.

THE COURT: Perhaps you could clarify that, Mr. Shandell.

Q What is building number 7?

A Low rise.

Q In buildings like that was it your practice in 1972 to shut this machine off after a couple of hours in the morning, after a couple of hours in theafternoon, after a couple of hours in the evening?

A I don't think so, no. I don't recollect fully but I don't think that was our operation, no.

Q Your operation was to run it 24 hours a day?

A Well, it was an automatic machine, so we would run it, yes.

Q And what you understood was that this machine was automatic and this could run 24 hours a day; is that right?

A Right, correct.

Q In the low rise building did you have a porter on duty after 11:30 at night?

A No, no, we did not.

Q I see. So that if the machine ran during the night it would run automatically without a porter there; is that what you are saying?

A I am saying we had porters on duty, not strictly for that one building. They would cover all nine buildings.

MR. SHANDELL: I move to strike.

A But they would get into building 7 to check it.

MR. SHANDELL: Move to strike the answer as not responsive, your Honor.

THE COURT: I will let it stand.

Q Now, Mr. Nelson, in any event in 1972, in building 7 the machine would customarily run 24 hours a day automatically, is that right?

A It would be on 24 hours a day. It doesn't mean it had to run 24 hours a day.

Q Because it would turn it itself on and off through the electric eye ?

A Exactly, yes.

Q Was that your understanding of how this machine was supposed to operate?

A Yes.

Q And did you have a discussion with anybody with regard to the extent to which this machine could work without a porter in attendance?

A No.

Q Well, weren't you concerned, Mr. Nelson, about the manpower requirements for this machine, if any?

A Mr. Shandell, when you got 17 units and you have capable men below you, that was really their responsibility.

Q So you never concerned yourself with whether or not a porter had to be on duty whenever the machine was running; is that what you are saying?

A No, I am not saying that.

Q Did you concern yourself with the question of whether a porter had to be on duty whenever the machine was running?

A Yes.

Q And did you discuss that with anybody?

A Mr. Herman.

Q With anybody else?

A No.

Q What did you say to Mr. Herman and what did he say to you about that subject?

A I would say when we distributed the manpower at Southbridge Towers we had figured out just how many hours it would take a porter to clean the buildings, take care of that compactor, the chute rooms on each floor, and I think that was in a general discussion I had with Mr. Herman.

Q By the way, how many porters would work in those days in building 7, the 8 to 5 shift?

A One porter.

Q Would he have other duties other than the compactor?

A Sure.

Q What would he have to do other than work the compactor?

A Maintaining the floors, maintaining compactor chutes on each floor, clean lobbies, clean the laundry rooms, and cleaning the basement. Excuse me, not solely on a one day basis.

Q Could he do this work while thecompactor was running?

A Yes, he could.

Q Was he instructed to leave the compactor on and go about his work?

A Yes, he was.

Q By whom?

A By Mr. Herman and at that time an assistant super, Mr. Rivera.

Q And he was instructed then that he could go about whatever cleaning work he had on that particular day and the compactor would work its way automatically; is that right?

A That's right.

Q That was your understanding of how it was supposed to work; is that right?

A Yes.

Q I show you a picture, Mr. Nelson, and ask you whether it is a fair and accurate representation of the compactor located in unit number 7?

MR. SHANDELL: May I have this marked for identification, please.

(Plaintiff's Exhibit 1 is marked for identification.)

Q I show you Plaintiff's Exhibit 1 marked for identification, Mr. Nelson, and ask you whether it is a fair and accurate representation of the compactor in unit number 7?

MR. SHANDELL: May I approach the witness, your Honor?

THE COURT: Please hand it to him. He can only look at it if you hand it to him.

A I would say yes.

MR. SHANDELL: I offer it in evidence, if your Honor please.

THE COURT: Is there any objection, gentlemen?

(Pause.)

MR. IVONE: No objection.

MR. KOHLER: No objection.

MR. ISAAC: No objection, your Honor.

MR. REGAN: No objection.

MR. WILENSKY: No objection.

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(Plaintiff's Exhibit 1 is received in evidence.)

MR. SHANDELL: May the jury see the exhibit, your Honor?

THE COURT: Surely.

JUROR NUMBER 2: We are curious about the placement of the off and on switch. Can somebody explain that?

THE COURT: In due time that will be developed.

MR. SHANDELL: Only one thing at a time.

JUROR NUMBER 2: Sorry.

BY MR. SHANDELL:

Q Now, in connection with the purchase and installation of these machines, Mr. Nelson, were you furnished by either Auto Pak or Universal Thermal with a stick to operate these machines?

MR. REGAN: I have to object to that, if the Court pleases, this "either/or."

THE COURT: Well, I think "either/or" is unnecessary from the questioner's point of view.

Just simplify it, Mr. Shandell.

Q Did Auto Pak ever furnish you with a stick for the operation of this machine?

A No.

Q Did Universal Thermal ever furnish you with a stick for the operation of this machine?

A I would not know. I don't know.

Q Did you ever see the plans and specifications of this machine?

A Yes, I have.

Q Did it ever include a stick?

A No.

Q Did you folks at Southbridge Towers issue to the porters who were operating these machines sticks?

A Yes, we did.

MR. SHANDELL: May we mark this for identification, please.

(Plaintiff's Exhibit 2 is marked for identification.)

Q I show you Plaintiff's Exhibit 2, Mr. Nelson, and ask you whether that is a fair and accurate representation of the sticks that you had issued to these porters for use of these machines?

A I would say yes.

MR. SHANDELL: I offer it in evidence, if your Honor pleases.

Q By the way, the stick is next to a compactor which is fairly represented in that picture as the compactor in that unit; is that correct?

A I don't think this is the compactor in building 7.

Q The picture depicts, however, the stick that is

in all the compactor rooms or the type of stick that is in all the compactor rooms in your --

A It's similar to it, but that's not the compactor in building 7.

MR. SHANDELL: I offer the picture only as to the stick, if your Honor pleases, with the understanding that this is a different compactor or may be a different compactor.

(Pause.)

MR. IVONE: Your Honor, to the extent that he has indicated, this stick is apparently not at the compactor at building 7, and I would have to object then.

THE COURT: You would have to what?

MR. IVONE: I object, if your Honor please.

THE COURT: All right.

MR. WILENSKY: Your Honor, is it necessary for all of the defendants to object or would one objection suffice for all?

THE COURT: If you all agree, I will take the objection of one of you to include all of you; is that all right?

MR. WILENSKY: Yes.

THE COURT: I am going to sustain the object without prejudice, Mr. Shandell. What I mean by that is it seems to me that you are probably going to offer the stick or

a stick. So I don't really know why we need a photograph, particularly since Mr. Nelson tells us he is not sure this is the same compactor in the same building. Sticks tend to vary possibly. Who knows.

MR. SHANDELL: Thank you, your Honor.

THE COURT: On that note, let us suspend for luncheon. Is that all right with you?

MR. SHANDELL: Fine, your Honor.

THE COURT: We will suspend, ladies and gentlemen, for luncheon and we will take a little over an hour because it is hard to get a place to eat around here.

Please be back in your jury room a minute or two before 2:15 so, hopefully, we can get a prompt start at 2:15.

(Luncheon recess.)

AFTERNOON SESSION - 2:15 P. M.

(Jury present.)

THE COURT: All right, Mr. Shandell.

MR. SHANDELL: Will the witness please take the stand again.

H A R R Y N E L S O N, resumed.

DIRECT EXAMINATION (CONTINUED)

BY MR. SHANDELL:

Q Mr. Nelson, was the stick from Unit 7 subpoenaed by my office?

A I think it was, yes.

Q And has it been brought here to court pursuant to that subpoena?

A Mr. Herman brought it in, right.

MR. SHANDELL: May I see it?

MR. ISAAC: May I say, this is not the stick that was there in 1972 but a facsimile.

Is that all right, Mr. Shandell?

MR. SHANDELL: It's all right with me.

May we mark it for identification?

(Plaintiff's Exhibit 3 marked for identification.)

Q Mr. Nelson --

MR. IVONE: Before this is opened, your Honor,

I believe the purpose is to show the particular stick, what indentations it may have had on it. I must object to using this stick, your Honor.

THE COURT: I don't know for sure, gentlemen, but I assume that all that is being sought to be done here is to show some stick approximately like the stick that was apparently used with these impacting machines.

Isn't that so?

MR. SHANDELL: That's correct.

THE COURT: Let's get to it. You make more contretemps about minor matters here than we really need to.

Q Mr. Nelson, I show you this stick that's been marked Plaintiff's Exhibit 3 for identification and I ask you if this was the sort of stick, the same size and type, that was being used back in 1972 as issued by your firm in connection with the operator of the compactors?

A This is the stick that Mr. Herman, my superintendent, had issued to the porters, yes.

MR. SHANDELL: I offer it in evidence, if your Honor pleases.

THE COURT: All right. I take it there is no objection on the basis offered, is that right, gentlemen?

MR. ISAACS: No objection.

MR. IVONE: No objection, your Honor.

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(Plaintiff's Exhibit 3 received in evidence.)

Q Now, Mr. Nelson, would you please explain to the Court and jury what the stick was used for in connection with an automatic compactor that would run all night even without a porter there?

MR. IVONE: Objection, your Honor.

THE COURT: Sustained as to form.

MR. ISAAC: I object also.

THE COURT: Sustained. I told you if one objects until you tell me to the contrary, I take it it is a joint objection.

Second of all, let's rephrase that, Mr. Shandell. You don't have to put it that way, from your own viewpoint.

Q Say, what was the stick for that you issued to the porters in connection with the compactors?

MR. IVONE: In building number 7. I object to it.

THE COURT: First of all, you didn't issue these sticks, did you?

THE WITNESS: No, I did not.

THE COURT: There is a man named Herman he said did it. Did you get that?

MR. SHANDELL: Yes.

THE COURT: Then I think we haven't got the right witness, don't you think?

MR. SHANDELL: Mr. Herman is here and will be called eventually.

THE COURT: Fine, let's wait for him. Anything else of Mr. Nelson?

MR. SHANDELL: Yes, your Honor.

Q Mr. Nelson, when you got all the instructions from Universal Thermal, did they include anything about a stick?

A I didn't get --

THE COURT: He didn't get the instructions.

Q Do you say, Mr. Nelson, that you did not get any oral instructions?

A I told you I did not. Mr. Herman got it.

Q If Mr. Herman said you got it, he would be wrong?

MR. ISAAC: Objection.

MR. SHANDELL: I have no further questions.

THE COURT: Any cross-examination, Mr. Ivone?

MR. IVONE: Yes, your Honor.

CROSS-EXAMINATION

BY MR. IVONE:

Q Mr. Nelson, you learned that an accident happened to Mr. Merced on the same day it happened?

A Yes, sir.

Q And in the course of your business as the manager there, did you submit a report?

A Yes, I did.

Q I show you this paper.

MR. IVONE: Can it be shown? May I show it to the witness, your Honor?

THE COURT: Certainly.

Q That consists of two pages, Mr. Nelson. Is that your report?

A Yes, that's my report.

Q And that's your signature on it, is that correct?

A Yes, sir.

Q Was that report submitted on the same day of the accident, sir, July 13, 1972?

A What day of the week is it? I want to be --

Q Someone says a Friday -- a Thursday.

A If it was a Thursday, it would be turned it by 9 o'clock Friday morning. If it was Friday, it would be turned in the same day, I am just not sure of the day.

Q All right. In your report, did you report how the accident occurred?

MR. SHANDELL: I object to referring to a document not in evidence, your Honor.

THE COURT: Yes. If you want to offer it, offer it.

MR. IVONE: All-right, I offer the document into

evidence.

THE COURT: To whom did you submit this report, Mr. Nelson?

THE WITNESS: This report went to Mr. Bromberg, who is a vice president of my company, wherein our main office at 654 Madison Avenue we have our own insurance department, and it was handled from there.

MR. SHANDELL: Objection, your Honor.

THE COURT: Objection to what?

MR. SHANDELL: To the report.

THE COURT: May I see this?

(Document handed to Court.)

THE COURT: Take a look at Item number 3, Mr. Nelson, and you will notice that you filled that out I guess in your own hand, is that so?

THE WITNESS: Yes, sir.

THE COURT: Then it continues on the back page. From whom did you get that information, do you recall?

THE WITNESS: Mr. Herman and Mr. Diaz. That's my head super and assistant head super.

1-2 THE COURT: At this point, but not necessarily with prejudice to the future course of the trial, Mr. Ivone, I will sustain the objection.

Do you get the significance of what I just said?

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MR. IVONE: I do, your Honor. May we mark it for identification?

THE COURT: It will be and it is Auto Pak A for identification.

(Defendant's Auto Pak Exhibit A marked for identification.)

MR. IVONE: May I establish this is a document made in the usual course of business?

THE COURT: Do you recall what I asked the witness myself a moment ago?

MR. IVONE: Yes.

THE COURT: Let's not belabor it.

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Q Was it your duty to obtain sufficient information from other employees concerning the happening of an accident?

A It is my duty to fill out any accident report -- any man that has an accident, it is my duty to fill out an accident report.

THE COURT: And to submit it to Bromberg?

THE WITNESS: Within 24 hours, right.

Q Did you ever happen to talk to Mr. Merced after the accident? I am talking about the porter who was injured.

A I went up to see Mr. Merced the day after the accident.

Q And did you discuss with him how the accident happened? Just yes or no.

A I really don't know. The man was in bed. I don't know how to really answer that. I would say yes, I did.

Q Looking at your report that you have in front of you, sir, which is now marked as Defendant's Exhibit A, would you tell us, please, whether the information Mr. Merced gave you was consistent with what you wrote on the report?

MR. SHANDELL: Objection, your Honor.

THE COURT: Yes. I think since the jury has not yet the benefit of the report or his remarks therein yet, I think that is an unfair question.

Again, however, as the trial unfolds, it may well

be we can get it in.

Q As a result of what Mr. Merced told you as to the happening of the accident, did you write any other report as to how it happened?

MR. SHANDELL: Objection, your Honor.

THE COURT: Following your visit with Mr. Merced at the hospital, did you have occasion to write another report?

THE WITNESS: No.

THE COURT: Anything else?

MR. IVONE: Nothing else of this witness, your Honor.

THE COURT: Mr. Kohler?

MR. KOHLER: No questions.

THE COURT: Mr. Isaac?

MR. ISAAC: Permit me a few, your Honor.

CROSS EXAMINATION

BY MR. ISAAC:

Q Mr. Nelson, I am going to ask you some questions now directed toward the chain of command or hierarchy at Southbridge Towers back in July of 1972. Do you understand that, sir?

A Yes.

Q Now, were you the manager, is that correct?

A That's correct.

Q When you use the term "manager," were you the

manager of the entire complex?

A Complete complex.

Q All of the nine buildings?

A All of the nine buildings.

Q And did you have, sir, as part of the custom and practice of running that building, did you have certain personnel under you or under your supervision?

A Yes, I did.

Q Now, going below the title of manager, did you have a superintendant?

A Yes, I did.

Q And was the name of that superintendant Mike Herman?

A Yes, it was.

Q And is he the gentleman that is in court today?

A Yes, he is.

Q And did he come to court with you today?

A Yes, he did.

Q Was he the superintendant of all the buildings?

A Yes, he was.

Q Did he have more of a direct charge or a direct contact with the handymen and the porters than you did?

A He had full charge.

Q With respect to the operation of these compactors,

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whether it be number 7 or any other building, who had more control or direction of the practice and procedure relating to the working of these compactors, you or Mr. Herman?

A Mr. Herman.

Q Now, did you also have an assistant superintendent under Mr. Herman?

A Yes, I did.

Q As part of this chain?

A Yes.

Q Do you recall who he was back in July of 1972, if you recall?

A Mr. Rivera.

Q Is that Luis Rivera?

A Yes.

Q I take it that gentleman was then under Mr. Herman?

A That's correct.

Q And under Mr. Rivera did you have a foreman of some kind?

A Yes, I did. There were a few of them. I know of Mr. Diaz, I know of a Chris --

Q Sulliverez?

A Right.

Q Is that C.?

A Yes.

Q Christoffel, right?

A Right.

Q Then under the foreman you had handymen and porters, is that correct?

A That's correct.

Q Was that the general hierarchy, if I can use that term, or the general chain of events or chain of command?

A That's the chain of command.

MR. ISAAC: Thank you.

THE COURT: Mr. Regan.

MR. REGAN: I have no questions.

THE COURT: Mr. Wilensky?

MR. WILENSKY: I have no questions of this witness.

THE COURT: Mr. Shandell?

MR. SHANDELL: No questions.

THE COURT: Thank you, Mr. Nelson. You may be excused.

MR. IVONE: Your Honor, if I may?

THE COURT: If you may what?

MR. IVONE: Ask a couple of questions.

THE COURT: You just had your turn. What is the significance of this?

MR. IVONE: Something else was brought out. I wish to cover it.

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THE COURT: All right, make it quick.

FURTHER CROSS EXAMINATION

BY MR. IVONE:

Q Is Mr. Rivera still employed by you?

A No, he isn't.

Q Did you receive a report from Mr. Rivera as to the happening of the accident?

A This was a joint report that I got from Mr. Rivera and Mr. Herman.

Q So Mr. Rivera was also present at that meeting you said where Herman and Diaz had told you how it happened?

A If I am not mistaken -- we are going back two years -- I think he was present, yes.

Q How about Mr. Sulliverez, was he also present?

A Yes, he was.

Q So to get this straight now, Mr. Herman, Mr. Diaz, Mr. Rivera and Mr. Sulliverez were all present at that conversation when it was reported to you how the accident occurred?

A I am pretty sure they were, yes.

Q And was it the obligation of the superintendant, namely, Herman, of the assistant superintendant, namely, Rivera, and of the foreman, namely, Diaz, and Sulliverez to make reports to you concerning an accident and injury that occurred to any of the handymen or porters?

A That was really Mr. Herman's duty to report it to me. They would report it to him.

Q They would report to him and he in turn to you?

A Exactly.

MR. IVONE: That's all I have, your Honor.

THE COURT: Anything else, gentlemen?

You had better leave before they change their minds.

THE WITNESS: Thank you.

(Witness excused.)

MR. IVONE: Again may I reoffer at this time this statement, your Honor?

THE COURT: No. You apparently did not understand the force of my ruling. Again, it is without prejudice, but that is something else which has not happened yet.

Who is your next witness, Mr. Shandell?

MR. SHANDELL: Mr. Herman.

THE COURT: Where is he?

MR. SHANDELL: He should be in the witness room, your Honor.

M I K E H E R M A N, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Herman, are you associated with Southbridge Towers?

A Yes.

Q In what capacity, sir?

A I am the superintendant.

Q Mr. Herman, as the superintendant, what are your duties?

A Pardon me?

Q What are your duties as the superintendant?

A I take care of the complaints, I supervise the maintenance and I give orders to the porter and I think that's all.

Q Were you the superintendant back in 1970 when the compactors were delivered to the premises?

A Yes, the compactors were already there when I come 1970.

p.m.

Q And were you the superintendant when they started to use them?

A Yes.

Q Now before the compactors were started to be used did you receive any instructions from Auto Pak about how they should be operated?

A There was somebody there, some gentleman from Auto Pak and he give us the instructions.

Q He gave you instructions?

A Yes, me and my assistant.

Q And did he give Mr. Nelson instructions?

A No. At the time he was not there.

Q I see. Do you remember testifying in an examination before trial in this case, where you were placed under oath and you gave your testimony under oath in November of 1974 at the offices of Morris, Duffy, Ivone & Jensen?

A Yes.

Q And did you say this about the Auto Pak people, page 47:

"Q Did anybody ever appear from the manufacturer at your premises from Auto Pak, the people who made the machine?

"Did you see anybody at Southbridge?

"MR. FRIED: Before the accident?

"Q Before the accident.

"A Yes, somebody was there, some representative.

"Q Do you know who that was?

"A No, I don't remember the name.

"Q Do you know when that was?

"A He mostly talked to Mr. Nelson."

Did you say that?

MR. ISAAC: I object on the ground that is not inconsistent with the testimony. I ask it be stricken.

THE COURT: You may be right, but I will let the jury decide that.

Q Did you say that, sir?

A I don't remember.

MR. ISAAC: I will concede, your Honor, to make it easy, that that was said.

Q Did he talk to Mr. Nelson?

A PArdon me?

Q Did the representative of Auto Pak talk to Mr. Nelson?

A If I talk to Mr. Nelson?

Q No, the representative of Auto Pak, did he talk to Mr. Nelson?

A This I don't know.

Q In any event you say he talked to you?

A Yes.

Q Did he tell you how to run the machine?

THE WITNESS: I'm sorry, your Honor, I am bad on hearing.

THE COURT: Could you speak up?

MR. SHANDELL: I will try to speak louder, your Honor.

THE COURT: I might say though my hearing until earlier today I thought was very good, but I am having trouble now.

MR. SHANDELL: I am sorry, your Honor.

Q Did the representative from Auto Pak tell you how to run the machine?

A Yes.

Q What did he tell you?

A He show us how we put this on, how is the safety, what we should do by packing there, sausages. He give us complete instructions.

Q Did he tell you the machine should be run part-time or full time?

MR. ISAAC: I object to the form of the question. It gives alternatives. But there may be a third alternative, your Honor.

THE COURT: I think myself, from your own point of view, Mr. Shandell, you could do a little reframing of that

question.

MR. SHANDELL: I will, your Honor.

Q Did the representative from Auto Pak tell you that that machine was to run twenty-four hours a day?

A No.

Q Excuse me?

A No.

Q Did the representative from Auto Pak tell you that you could turn it off and turn it back on during the day?

A Yes, he say we can leave this on long time, you know. But we find out later was no good, leave the machine on. We tell the guy use this only if there is garbage in it, because we find out many times the machine was running and the garbage was stuck on top, you know. Was only a little paper blocking at the eye.

THE COURT: You are talking about the electric eye?

THE WITNESS: Electric eye. That's why the machine was going on and off without garbage falling to the piston.

THE COURT: Do I understand you to be telling us that after the experience there came a time when you only operated it for certain periods during the day and the night?

THE WITNESS: That's right, yes.

THE COURT: When were those periods, sir?

THE WITNESS: It was morning, afternoon, evening.

Depending on how much garbage was built up in the chute.

THE COURT: All right.

Q Do I understand, Mr. Herman, when the representative of Auto Pak came around he said you should leave it turned on a long time and thatyou later gathered from your experience that it was just better to turn it on in the morning, the afternoon and the evening, is that right?

A Yes.

Q And that was because if you did not have a porter around the garbage would stack up aud would come down to the electric eye?

MR. IVONE: Objection, your Honor.

Q And the machine would stop?

MR. IVONE: Objection, your Honor.

THE COURT: I will allow that.

Q Is that correct?

A I don't have the question.

THE COURT: You will have to rephrase it, Mr. Shandell.

Q Did you tell his Honor just a moment ago, that the experience that led you to start to turn this machine on only in the morning, afternoon and the evening had something to do with the paper getting stuck up aud the electric eye not working; did you tell his Honor that just before?

A Yes, sir, he was told.

Q What was stuck?

A If the garbage doesn't fall down the machine does not operate, you know.

Q If a porter wasn't there to make sure the garbage would fall down to the electric eye, then the machine would not operate; is that correct?

A Yes, sir.

Q And is that why, Mr. Herman, that you decided to run the machine only when a porter was around?

A That's right.

Q And did you issue the porters sticks in connection with their operation of the electric eye?

A Yes.

Q And were those sticks for the purpose of unjamming the garbage so it would fall down to activate the electric eye?

MR. IVONE: I am going to object to this, your Honor. This is leading. Why can't we find out from this witness why they are being used, not from Mr. Shandell.

THE COURT: I will agree with you here. I will sustain that objection as to form.

Reframe it, please.

Q What was the purpose of the sticks?

A Don't put the hand inside. Push the garbage and it start falling down from the chute to the piston.

Q Now, did anybody from Auto Pak ever tell you about a problem where the garbage would get stuck and you would need a stick to push it down with?

A No.

Q Did anybody from Universal Thermal ever tell you about a problem where the garbage would get stuck and you would need a stick to push it down with?

A There was some servicemen who say we should push it with some stick.

Q Is that where you got the idea, somebody from Universal Thermal gave you the idea about the stick?

A No. I think we have the idea before because we don't want the men to put hand inside, you know. Better the stick.

Q And if you didn't give them a stick they would have to put their hand inside, sir?

A Never.

Q If you didn't give them the stick would they have to put their hand inside?

A No, they don't has to put their hand inside.

Q Even without a stick they wouldn't have to put their hand in?

A With or without a stick.

Q Didn't you just tell me the reason you gave them a stick was they shouldn't put their hand inside?

THE COURT: Mr. Shandell, let's not quibble. You called this witness, not to argue with him.

Q Mr. Herman;would you tell us, sir, did you ever tell the porters what to do with the stick?

A I don't tell them but my assistant tell them.

Q Did you ever tell your assistant what to tell the porters to do about the stick?

A Yes.

Q What did you tell your assistant to tell the porters to do about the stick?

A Just use the stick if the garbage doesn't fell down, you know. Just push in and this way loosen the garbage and it fell down to the chute, to the piston.

THE COURT: When you say to us that when the garbage did not fall down, where do you mean that the garbage was or where did it stick, so to speak?

THE WITNESS: Was part of the compactor machine on top and the rest was in the chute. This way the piston is on the bottom here and it doesn't fell all the way down. It stuck.

THE COURT: In other words, a box would catch in

the chute?

THE WITNESS: The carton, it open, you know, and it stuck on I will say half of the machine. About from the chute, two feet from the chute.

THE COURT: Are we to understand that this stuck somewhere in the machine itself or in the chute leading into the machine?

You see, what I am asking? In other words, I am trying to find out where did the refuse or garbage stick?

THE WITNESS: Mostly -- well, it is coming from the chute down. It is in the machine already.

THE COURT: It is already in the machine?

THE WITNESS: In the machine, but still got three feet coming down to the piston.

THE COURT: Or the ram, as it's been called?

THE WITNESS: Yes.

THE COURT: Two or three feet above the ram?

THE WITNESS: That's right.

THE COURT: But frequently within the machine itself?

THE WITNESS: Yes.

THE COURT: All right.

Forgive me, Mr. Shandell.

MR. SHANDELL: Your Honor has done a good job in

clarifying the matter for us.

Q Now, was there something in the machine container, a door that could be opened?

A Yes, there are doors there.

Q Did the door have a hinge at the top or the bottom?

A The hinges are on the bottom and there are two hooks what close the door on the top. That is to be opened this way, down (indicating).

Q It could be opened just by pulling it down?

A That's right, yes.

Q If you pull that door down did the machine stop running?

A No, she doesn't stop. She has to be shut off.

Q Now, sometimes did you find that apiece of iron or a piece of wood stuck and you would have to reach in with a hand to get something like that out?

A This way we have to shut off two switches, close the part of the machine so nobody can throw nothing down, from the chute nothing can fell down, and we reach for the piece. We can use some other stick to reach this. But the porter never do this.

MR. IVONE: May I have the question and answer read back, your Honor? I cannot really follow it.

THE COURT: Yes.

(Record read.)

Q Now, sir, you say to do that first you turn off two switches?

A Yes, sir.

Q Where were the two switches that you turned off first before reaching a hand into take a piece of iron or wood or something like that out?

A Switch is right on the machine, side of the machine and other switch is on the wall, the main switch.

Q How far away from the operator was the wall switch?

A About four feet.

Q The one on the wall?

A From the operator.

Q From the operator?

A Yes.

Q To the wall?

A About four feet.

Q And how far was the switch on the machine from the operator?

A Oh, about 16 inches, 18 inches.

MR. IVONE: Excuse me, how much was that?

THE WITNESS: 16 or 18 inches.

Q Now, did you ever get from Auto Pak any instructions about how to operate this machine in writing?

THE COURT: He wants to know if you ever got any written materials, plans, specs, instructions?

THE WITNESS: We have one brochure.

THE COURT: One brochure?

THE WITNESS: Yes, sir.

MR. SHANDELL: May we have this marked for identification?

(Plaintiff's Exhibit 4 marked for identification.)

Q I show you this, Mr. Herman, Plaintiff's Exhibit 4 for identification, and I ask you if that is a copy of the brochure that you got?

A Yes, that is a copy.

MR. SHANDELL: I offer it in evidence, if your Honor please.

(Pause.)

THE COURT: I take it all of you gentlemen have seen this before, haven't you?

MR. IVONE: I have no objection, your Honor.

MR. ISAAC: I have no objection, your Honor.

MR. WILENSKY: No objection.

(Plaintiff's Exhibit 4 received in evidence.)

Q Is this the only instructions that you at Southbridge ever got in connection with the operation of this machine?

A Yes.

MR. ISAAC: I am going to object unless we are talking about oral as opposed to written. I am not sure about that, Judge.

MR. SHANDELL: Only written instructions, I meant, and I think the witness understood it that way.

THE COURT: I didn't and the lawyer didn't. I don't know what the witness understood.

Look, the question must be rephrased, Mr. Herman. First of all, did you ever receive any other written material of any kind from Auto Pak that you can recall?

THE WITNESS: No.

THE COURT: All right.

Q Now, is there anything in here about what the operator's actions are supposed to be in the way he handles the machine?

MR. ISAAC: I am going to object to that question, sir, as to form and substance.

THE COURT: Yes, what's in there is in there, Mr. Shandell. You are at liberty to read us anything you want.

If you want to ask Mr. Herman about any specific portion, of course, that is another problem.

But which is it, do you want us to read something?

MR. SHANDELL: Your Honor, I only want to know

where it says --

THE COURT: No, what it says, it says. It is written, I assume, in the English language. If you want to read it to us, if you want to ask him a question about a certain portion on it, on the handling, that you may do, too.

Q Mr. Herman, did you ever have a writing from Auto Pak that says anything about how the operator is to handle the machine?

MR. ISAAC: Objection.

THE COURT: Sustained, Mr. Isaac.

We already have his answer saying he did not.

2b-1

Q Did you ever get a writing from Universal Thermal about how to run this machine?

A No.

Q Did you ever talk to anybody at Universal Thermal about the problem that you were having whereby if the porter wasn't there, the paper might stick and the machine would shut off?

MR. ISAAC: I respectfully object to the form of that question, sir.

THE COURT: I think I sympathize with that objection. Reframe it.

Q Did you ever talk to anybody at Universal Thermal about the situation which you described earlier with the paper or the cartons sticking in the compactor?

MR. ISAAC: I ask the court to intercede at this moment and ask the witness if he understands the question. Then I would have no objection.

THE COURT: I am sure if he can't he will tell us.

A You talking about in the chute or in the machine?

Q In the machine.

A There was servicemen that tell us to shut off everything and clean this, the garbage.

MR. SHANDELL: I move to strike the answer as not responsive, your Honor.

THE COURT: I'm not sure I agree with you.

Are you telling us that the serviceman, meaning by that somebody from Universal?

THE WITNESS: Yes, from the beginning.

THE COURT: In the beginning it was Universal, and later somebody else?

THE WITNESS: Yes.

THE COURT: They said in substance what?

THE WITNESS: If we got trouble with the garbage stuck inside, you know, shut it off everything, shut off the chute on top and clean it.

THE COURT: In other words, shut it off and the methods you told Mr. Shandell a minute ago, two switches and close the top door to the chute?

THE WITNESS: Yes.

Q And that's all they told you; is that correct?

A Yes.

Q And did anybody from Auto Pak ever give you any advice about this situation?

A I think there was the same serviceman, from Auto Pak also some guy, some serviceman, you know.

Q Did he give you any different advice or did he give you the same advice?

A No. He just mentioned don't touch nothing. In case

you got trouble, to call us.

Q So you are saying that the man from Auto Pak told you in case the garbage got stuck in the machine you should call Auto Pak?

A Call service,at the present time, who we got.

Q So what you are saying is that the advice you got from Auto Pak is that everytime the garbage got stuck in the machine, you should call up the serviceman to come and fix it?

MR. ISAAC: I object. I think that's a characterization.

THE COURT: Rephrase it.

Q All I can ask again, Mr. Herman, what is it the man from Auto Pak told you you should do with the problem if the garbage got stuck in the machine.

MR. ISAAC: Objection.

THE COURT: I'll allow that.

You mentioned some man from Auto Pak mentioning something. What did he say, do you remember?

THE WITNESS: Your Honor, does he mean big job, big stuff, you know?

THE COURT: We have competition from the radiators. Repeat that.

THE WITNESS: He mean big job something stuck that

we should call them. If the garbage don't come down we just push this with the stick.

THE COURT: That's what the Auto Pak man said?

THE WITNESS: Yes.

THE COURT: All right.

Q Now, you mentioned something that keeps the garbage from coming down the chute. Whatdid you call it.

A I call it the top door chute. Close the chute completely so nothing can fell down.

Q Was such a door in existence at the compactor in Unit number 7 in July of 1972?

A Sure, yes.

Q And if you close that door nothing could come down the chute?

A Nothing.

MR. IVONE: Excuse me, what door?

MR. SHANDELL: The door that covers the machine, between the machine and the chute.

Q Now, did you used to go around this complex to watch the porters doing their work?

A I go around but I was not watching them, you know.

Q Did you ever see the porters standing there with the machine going with their sticks in the hopper door pushing the garbage down?

A Yeah.

Q Did you ever tell them not to do that?

A No.

Q When you saw the men doing this, clearing the machine with the sticks, did you ever tell them to turn the machine off first?

A If I saw the man doing this I would tell him.

Q Do you remember your examination before trial and being asked this question at page 55 and giving this answer, line 14:

"Q When you saw the men cleaning the machine with the sticks or clearing the machine with the sticks, while the machines were operating, did you then at that time instruct the men to turn the machines off?

"A No, I don't."

Did you say that under oath in this examination before trial?

A Gee, I couldn't remember.

MR. SHANDELL: Mr. Isaac, will you concede that statement?

MR. ISAAC: I will stipulate that was the question and answer.

THE WITNESS: There was so many question and answer, you know.

Q Now, when the garbage came out of this machine, did it go into something?

A Yes. The garbage go in plastic bag.

Q And what happened when the plastic bag filled up?

A It has to be tied with wire and then set another piece.

Q If you didn't take the bag off and tie it with wire would anything happen with regard to the operation of the machine?

A The bag will be just too long, you know.

MR. IVONE: I'm sorry, the answer was what? Your Honor, may we have it read back?

THE COURT: Yes.

(Answer read.)

Q Well, you mean the bag could keep getting longer and longer?

A Yes.

Q Wasn't there an end to this, when the bag would stop getting longer?

A If there was, no more garbage there it would stop.

Q Did these bags have an infinite capacity to accept garbage from the machine?

A The bags are sausage-type. They are 20 feet long and the machine is pressing, pressing, and as soon as it come

about 36 inches long, he divide this. He tie it, cut it out and start a new bag.

2B-2 Q Wasn't there something in that machine that would cut it off when the bag was filled?

A Yes, a swtich.

Q Wasn't it automatic?

A Yes, it is.

Q Excuse me?

A It is.

Q That the machine would automatically cut off if the bag was filled?

A She just stop if the bag is full.

Q The machine would stop.

A Sometimes she make long bag and we better do this manually.

Q So you would have porters there to do this manually because sometimes the machine wouldn't stop; is that what you are saying?

A No, sometime we have trouble with the switch, you know.

MR. IVONE: I'm sorry, I didn't hear it.

THE WITNESS: Trouble with the switch.

THE COURT: Trouble with the switch, Mr. Ivone, he said.

THE WITNESS: Have to be adjusted or change the switch.

Q Is that the switch that was supposed to turn off the machine if the bag got filled?

A Yeah, that's the switch on the front.

Q You say you used to have trouble with the switch?

A From beginning there was lot of adjustment.

Q And what would happen when you would have trouble with the switch?

A What will happen?

Q Yes, when you have trouble with the switch. Describe the trouble.

A He make the bag long.

Q Did the bag burst?

A No.

Q Never burst?

A No. If there's some piece of glass inside, it break, you know.

Q And what instructions did you give your workmen to cope with this problem, if any?

A Just watch the bag, watch the bags, youknow.

Q So he had to stand there the whole time; is that right?

A Not all the time. Only if there was trouble.

Q Did you have your porters standing at this machine all the time the machine was running?

A Lately we find out it's better if the porter stay there and watch the machine. Shut it off as soon as it's empty.

Q And back in 1972 when did you have this machine running?

A 1972?

Q Yes.

A You mean if she was in trouble?

Q No. Did you have a certain part of the day when the machine ran?

A I don't understand that.

THE COURT: He wants, I think, subject to his correction, to know what was your schedule of operation in the summer of 1972 at one of these compacting machines.

THE WITNESS: It was morning, after lunch, and evening.

THE COURT: About what time in the evening, sir?

THE WITNESS: It was the night guy. Six, seven o'clock. Depends. He check how much garbage is in there.

THE COURT: In the morning I assume around breakfast time?

THE WITNESS: First thing in morning, eight o'clock

they are supposed to start working on the machine.

THE COURT: Then after luncheon?

THE WITNESS: After lunch. Depending on how much was there. Sometimes nothing there, a few bags only. Depending how people throw garbage down.

Q When the machine was turned on at eight o'clock in the morning, it hadnt been on since sometime the night before; is that right?

A Yes.

Q And people had a chance to throw garbage down the chute for awhile; is that right?

A Yes.

Q Did the garbage customarily pile up in the chute above the machine overnight?

A Sometimes was high up to first floor.

Q Up to where?

A First floor. But this was unusual.

Q When that garbage piled up like that and you turned the machine on and the garbage keptcoming down the chute into the machine; is that right?

A Yes.

Q When that happened, when you had the garbage all backed up in the chute, didn't that increase the number of times where the garbage would get stuck above the electric

eye and the machine would stop?

A I don't get you. I don't know what you mean.

Q Well, when you had the garbage stacked up in the chute like that from overnight, say up to the first floor, didn't the fact that it was stacked up like that make it happen more often, that the garbage would get stuck in the machine above the electric eye and the machine would turn off?

MR. ISAAC: Again I must respectfully object to the form of the question as posed.

THE COURT: Do you understand it?

THE WITNESS: No, I don't.

THE COURT. Rephrase it, please.

Q You told us that sometimes, at least, the garbage would get stuck in the machine above the electric eye and the machine would turn off; is that right?

A Yeah.

Q True?

A Sometimes it stuck over the electric eye.

MR. SHANDELL: May I have the witness' answer read? I didn't get it.

THE COURT: Yes.

(Answer read.)

Q Then the machine would turn off; is that right?

A But the machine was not on. He have to put her on.

Q Sir, if the garbage stuck over the electric eye with the machine on, the machine would stop working because nothing should interfere with the electric eye; is that right?

A If the electric eye is closed with any garbage, the machine doesn't start.

Q If garbage was stuck above it, the machine wouldn't be on?

A Yes.

Q When you have the garbage stacked up the chute overnight, didn't that increase the number of times that this garbage would stick above the electric eye?

A I don't know what you mean.

Q You don't know what I mean?

A No.

Q Did anybody at Auto Pak ever teach you about bridging?

A No.

Q Excuse me?

A Bridget?

Q Bridging.

MR. ISAAC: I think we should first establish if the witness knows what is meant by the term.

THE COURT: I think that might be a useful approach.

Q Do you know what bridging is?

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A No.

Q Did anybody at Auto Pak ever explain to you about bridging?

A No.

Q Do you know what arching is?

A What?

Q You don't know what it is?

A No.

Q Did anybody at Auto Pak ever explain to you about arching?

A I don't got this. I don't understand what you say, sir.

Q Did anybody at Universal Thermal ever mention bridging or arching to you?

A No.

Q Did anybody at Universal Thermal ever tell you that if you allowed the garbage to stack up in the chute, that would increase the tendency for the garbage to bridge or arch in the compactor?

A No.

Q No?

A No.

Q That door that comes across the top of the machine, do you call that a safety door?

A Yeah.

Q If the safety door isn't closed and the hopper door is open, would the garbage come down and bounce off the plate in the back of the hopper?

A If the safety door is closed?

Q If the safety door isn't closed.

A Oh, yes, if the safety door is open and somebody drops the garbage, pieces can come out; if the front door is open, sure.

MR. SHANDELL: I have no further questions.

THE COURT: Perhaps this would be a good time to take the afternoon recess, ladies and gentlemen. Ten minutes.

(Recess.)

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(Jury present.)

THE COURT: All right, Mr. Ivone.

CROSS-EXAMINATION

BY MR. IVONE:

Q Mr. Herman, I show you this picture. Take a look at it.

Is that how that the machine looked as you would look inside of it?

A Yes.

MR. IVONE: I offer that into evidence, your Honor.

MR. SHANDELL: No objection.

MR. KOHLER: No objection.

MR. ISAAC: No objection.

MR. WILENSKY: No objection.

MR. IVONE: If your Honor please, we are missing a lawyer here.

THE COURT: That's happened before. I don't know what happens to him. It is his duty to be here. I don't know why we have to worry about him.

X (Defendant Auto Pak Exhibit B received in evidence.)

MR. IVONE: Should I show it to Mr. Regan, your Honor?

THE COURT: Yes.

MR. IVONE: May we show it to the jury, your Honor?

THE COURT: Yes.

(Photograph handed to jury.)

Q Mr. Herman, while the jury is looking at that picture, that thing with the prongs sticking out, is that the ram, the front of the ram?

A The one with the teeth.

Q The one with the teeth?

A Here is the chute the garbage comes down on this ramp.

THE COURT: You will have to show that to the jury.

MR. ISAAC: If your Honor please, the rest of the members of the jury can't see it.

THE COURT: The lawyer conducting the examination I think would be worried about this. If he is not, I don't know what we are going to do about it.

MR. IVONE: Do you wish to move over?

THE COURT: Do you want him to come over in the middle, Mr. Ivone?

MR. IVONE: I would appreciate that.

THE WITNESS: This is down. This is as you look down the chute to the machine, compactor machine. This is the piston. It got big teeth. He come out and he press the garbage what is here, like the can is here and the garbage here he push this out to the bag and he come down here from the

chute and this is the ramp, the garbage hit the ramp and he fell down. He is not flat. He is angle, you know. Here comes the garbage and the piston comes out to the front and press the garbage.

Q Mr. Herman, before you sit down and while the jurors can still see this, as you open the hopper door, the one with the two clasps and you bring the hopper door down, and if you were to look in, would you be able to see that what you just described? Would you be able to see this piston with the prongs, the teeth?

A Yes. If you stay here and you look down, you will see this.

(Witness resumes witness stand.)

Q Now, this piston that you have been describing to us and you have shown to the jury, does that move slowly as it comes in to compact the garbage?

A Yes, he move slowly.

Q About how long do you say it takes for the piston, if it's all the way back, to come all the way forward?

A About 20 second.

Q Now, on Plaintiff's Exhibit 2, this is a picture of the machine. Would you take a look at that, Mr. Herman.

A Yes.

MR. IVONE: 2 is not in evidence. May I have 1

in evidence? That is what I asked for.

Q Plaintiff's Exhibit 1 is in evidence. Take a look at that please, sir.

A Yes, that's the machine.

Q You see there the hopper door is open, is that correct?

A Yes.

Q When that is operating, that hopper door is kept closed, is that true? If the machine is working, it's compacting garbage?

A What you call hopper door? You call this door?

Q Yes. This door is a hopper door.

A Yes, the door is closed as the machine is working.

Q The reason you close the door is because some garbage could pop out, is that right?

A Thats right, yes.

Q On the left side of that machine as you are facing it, are there certain controls there?

A Yes, the switches are here.

Q If you would come down again, Mr. Herman -- I am sorry to ask you to do this -- come down and show the jury, for example, which is the electric eye that appears on the outside.

(Witness leaves witness stand.)

A The little box.

Q Is that like a cylinder?

A Yes, that is the electric eye. As soon as some garbage block the electric eye inside if the machine is on the piston starts coming.

A-2 Q If the machine is in the off position, then it can't start, is that correct?

A No.

Q Where is the off and on switch, that is, on this machine?

A Here it is right here is the button.

MR. SHANDELL: May we have that marked, your Honor, the location the witness is pointing to?

THE COURT: Fine.

MR. IVONE: Put it below where you put your finger so you don't close off the knob.

(Witness writes.)

Q Besides that switch, Mr. Herman, you also have another switch on the wall,. you told us.

A On the wall is one more switch. That is the main switch which completely disconnects the power going to the machine.

Q In other words, that is the master switch?

A That's the master switch.

Q Also known as a junction box?

A Over here on the wall.

Q In other words, in back of the machine on the wall, that's where that is contained?

A Yes.

Q And there are wires leading into it, is that right?

A Yes.

Q Down at the bottom if you were to face the front of it, I see there is a long sausage shaped back attached to the machine.

A Yes.

Q Is that the bag you described before?

A Yes.

Q That bag you say is about 20 feet long?

A Yes, he come 20 feet. If he run he come up to 20 feet.

Q If you have the room to stretch out that 20 feet in the room where the compactor is, that compactor could conceivably go until all the garbage is in that 20 feet, is that correct, before it stops?

A But not in this room because this room is no so long.

Q So the room is too short, is that correct?

A Yes.

Q About how far away is the wall to the area where

the garbage comes out from?

A About ten feet.

Q So that the most you could fill up is a ten foot bag, is that it?

A Yes.

Q And when that ten foot bag is filled up, the machin cuts off, is that correct?

A Yes, is the switch on the front here.

Q Where is the switch on the front?

A Over here is location of the switch.

MR. IVONE: Will the jurors look where he is pointing.

THE WITNESS: Right on the front.

Q When you say right on by the front there, that would be approximately two feet from the beginning of the machine?

A Two, three feet, yes, I would say, yes.

Q It is on a sort of bar, is that correct?

A Yes, on the bar.

Q And that bar is a bar which contains and holds up the bag?

A Yes.

Q So it holds up in an open position, correct?

A Yes.

Q So that the garbage can readily go through?

A (Witness nods.)

MR. IVONE: Someone has requested that that be marked.

Q Would you mark where the switch is that would automatically cut the machine off when the bag is filled?

A Right here (writing).

Q Now, did you ever disconnect that switch?

A No.

Q I don't follow that.

Was that switch left on the machine in an operating condition or did you eliminate it?

A No, we don't disconnect it. It is on the machine still.

Q Did you disconnect that -- withdrawn.

Did you disconnect any of the wires leading to it so that it would not operate?

A No.

Q Now, at the time let's say in July of 1972, that switch was operating, it was in operating condition?

A It's hard to remember. I don't know.

Q Did you have any repairman in to fix that particular switch?

A We have two times in different buildings.

Q Now you are talking about different buildings.

We are talking about building number 7, Mr. Herman, only building number 7.

Did you have any repairman fix that particular switch?

A I don't remember.

Q And in 1972 it was Charter Compacting that was doing the work, the repair work or service work?

A Yes, I think so.

Q By the way --

MR. IVONE: You can sit down.

(Witness resumes witness stand.)

Q Universal Thermal, they came over several times to instruct your men on how to operate the machine?

A Yes.

Q Did they come over when you called for them, when you told them to come?

A No.

Q When did they come?

A They come and they call us down, me and my assistant, and say what else we want to know about it, and they show us again.

Q In other words, they showed you originally when they put in the machine how to do it, is that correct?

A Yes.

Q Did they show it to you and your men?

A Yes.

Q And after that they came down again, is that correct?

A Yes.

Q And they asked you then if you have any questions about it, is that it?

A Yes.

Q And you people had some questions?

A Yes.

Q And Mr. Rivera had some questions?

A Yes.

Q And Mr. Diaz had some questions?

A Yes.

Q And Mr. Sulliverez had some questions?

A That's right.

Q And they answered all the questions, is that correct?

A Yes.

Q And this was before the accident happened to Mr. Merced?

A Yes.

Q Now, how about your porters and handymen; were they instructed specifically by Universal Thermal?

A No.

MR. SHANDELL: Objection.

THE COURT: I am sorry. I didn't catch the question.

MR. IVONE: I said how about the porters and handymen, were they instructed by Universal Thermal, and he said no .

THE COURT: You are talking about porters like Mr. Merced?

THE WITNESS: No -- I am sorry. I don't understand right. I was thinking -- if he said handymen.

THE COURT: Let's drop the handyman bit. Let's stick to porters.

Q Did Universal Thermal instruct the porters?

A No.

Q Did the porters get instructions from somebody?

A Yes,

Q From whom.

A From my assistant, from the foremen of porters and from three guys: Diaz, Rivera and Sulliverez.

Q A porter such as Mr. Merced, was he instructed in English or in Spanish?

MR. SHANDELL: Objection, your Honor.

THE COURT: If he knows, I will allow it.

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MR. SHANDELL: Why don't we talk about a particular person, if your Honor pleases, Mr.Merced?

THE COURT: I think he means Mr. Merced.

Do you know how Mr. Merced was instructed, that is to say, in what language?

THE WITNESS: In Spanish.

THE COURT: In Spanish?

THE WITNESS: Yes.

Q Do you knowwho did the instructing?

A Yes.

Q Who?

A Mr. Rivera, Mr. Sulliverez, and Mr. Sandoval_- I am sorry -- Sanchez.

Q Mr. Sanchez?

A Yes.

Q Do you know where Mr. Sanchez is now?

A I hear he is someplace in Puerto Rico.

Q Do you have his address?

A No, sir.

Q How about Mr. Sullyverez?

A He is also someplace in Puerto Rico.

Q Do you have his address?

A Also no.

Q And you will not be able to obtain that address? Do you have any records which will show you what his address is in Puerto Rico?

A No.

Q How about Mr. Rivera? Do you have his address?

A Yes.

Q And what is that? Do you remember it?

A He is here 300 Greenwich Village in Independence Plaza. That is the three new buildings he is the super now.

Q You mean Greenwich Street? Independence Plaza is over here by the Hudson River.

A Yes, by the Hudson River.

Q After the accident happened -- withdrawn.

A report has to be made to your boss, is that correct?

A Yes.

Q After an accident happens, is that made by Mr. Nelson? Mr. Nelson makes a report, is that correct?

A Yes.

Q Do you give information to Mr. Nelson so that he can make the report?

A Yes.

Q Did you talk to Mr. Merced any time after the accident, either in the hospital, wherever it was, as to how the accident happened?

A Yes, I talked to him.

Q And did you tell Mr. Nelson what Mr. Merced had told you?

MR. SHANDELL: Objection, your Honor.

THE COURT: I will allow a yes or no answer.

Q Did you tell Mr. Nelson what Mr. Merced told you?

A Yes.

Q Based upon what you told Mr. Nelson, did he write out his report?

MR. SHANDELL: Objection, your Honor.

THE COURT: Overruled.

Q Do you understand my question?

A What I told Mr. Nelson?

Q No. I said, based upon what you told Mr. Nelson, did he then write out his report?

A Yes, he make statement to Workmens Compensation.

THE COURT: That is not the question. Did Mr. Nelson, to your knowledge, fill out a written report form to submit in the company, if you know?

THE WITNESS: I don't see him.

THE COURT: You don't see him?

THE WITNESS: No. I think he do anyway.

THE COURT: You think he does, but you weren't present so you don't know of your own knowledge?

THE WITNESS: No.

Q With respect to the information that you gave to Mr. Nelson, did you give it to him on the same day of the accident?

A Yes.

MR. IVONE: Your Honor, I again offer Defendant's Exhibit A into evidence.

THE COURT: Before we get to that, I think there is a little bit more groundwork. He says he talked to the plaintiff.

MR. IVONE: Yes.

THE COURT: Well?

Q Mr. Herman, what did Mr. Merced tell you as to how the accident happened?

A I was visiting Mr. Merced in hospital I think it

was next day, and I said, "What happened? Did you shut off the switch before you do something inside?"

He said, "No, we no shut off switch and the machine come."

And I don't want to bother him because that was the second day, you know. That's what I hear from Mr. Merced.

MR. IVONE: May I have that complete answer read back, your Honor?

THE COURT: Yes.

(Answer read.)

MR. IVONE: Your Honor, I now offer this into evidence.

THE COURT: Before we get to that, do you remember anything else that Mr. Felix Merced said to you about the accident in the hospital on the day after?

THE WITNESS: I think he say "Me like clean glass from the machine."

THE COURT: I'm sorry, I didn't catch that. What about glass?

THE WITNESS: He wanted to clean some piece of glass from the machine, from inside.

THE COURT: Clean a piece of glass in?

THE WITNESS: Yes, what was on the bottom in the machine.

THE COURT: In the bottom of the machine?

THE WITNESS: Yes.

THE COURT: Anything else you can recall that Mr. Merced said?

THE WITNESS: No.

MR. IVONE: May I continue?

THE COURT: Surely.

Q By the way, you just said that he told you he was trying to clean a piece of glass from the bottom of the machine. May I ask you, sir, in looking at Defendant's Exhibit B, when you say the bottom of the machine, where would it be with respect to the piston?

MR. SHANDELL: Objection, your Honor.

MR. IVONE: He is pointing, your Honor.

THE COURT: The objection is put to the form of the question, and I think Mr. Shandell is correct. Rephrase it.

Q When you talk about the bottom of the machine, what do you mean by bottom of the machine?

MR. SHANDELL: Objection, your Honor. The question is what did Mr. Merced mean by the bottom of the machine.

THE COURT: I would think that would be it.

Q What did you understand Mr. Merced to mean when he said bottom of the machine?

MR. SHANDELL: Objection, your Honor.

THE COURT: Again, there is a point here which counsel is making which I think he is correct on.

MR. IVONE: May I offer now this statement into evidence, your Honor?

MR. SHANDELL: I renew my objection.

MR. IVONE: Defendant's Exhibit A.

THE COURT: What is the basis of your objection to the statement, Mr. Shandell?

MR. SHANDELL: Thirdhand report of a thirdhand hearsay statement, your Honor. It purports to be what somebody told somebody what somebody told somebody.

THE COURT: But the somebody is here.

MR. SHANDELL: May I inquire of this witness on voir dire?

THE COURT: You certainly may.

VOIR DIRE EXAMINATION

BY MR. SHANDELL:

Q Mr. Herman, how do you say glass in Spanish?

A I don't know. I don't speak Spanish.

THE COURT: Are we to understand correctly that when you talked to Mr. Merced you and he were speaking English?

THE WITNESS: Broken English. That's why I exactly say like --

THE COURT: They way he put it?

THE WITNESS: The way he put it.

Q How do you say "Wood" in Spanish?

MR. IVONE: Objection.

THE COURT: Sustained.

Q You don't speak any Spanish at all?

A No.

Q You say you were communicating with Mr. Merced about how this accident happened?

A I called my assistant and he talked with him.

MR. IVONE: If your Honor please, may I object at this point that this is cross examination, not voir dire.

THE COURT: It is a little fine here due to the language problem. So far I don't think it is inappropriate.

You told us so far you and Merced conversed in English or broken English, is that correct?

THE WITNESS: Yes.

THE COURT: Next question, Mr. Shandell.

Q What you told Mr. Ivone is what you understood Mr. Merced to have communicated to you in broken English in the hospital on the day after the accident, is that what you're saying?

A Yes, he talk to me broken English also before the day of the accident.

Q We are talking about the day of the accident.

A Oh.

Q He was in the hospital, is that right?

A Yes.

Q His arm had just been taken off, is that right?

A Yes.

Q And he was talking broken English to you?

A Yes.

Q And that is what you say you gathered from his broken English as you talked to him in the hospital, is that right?

A Yes.

Q Did you tell Mr. Ivone you only asked what happened and you didn't want to inquire further? Is that what you said to Mr. Ivone?

A Yes. I just say what he tell me.

Q Did you tell Mr. Ivone you didn't want to ask Mr. Merced any more questions?

MR. ISAAC: I don't know, your Honor --

THE COURT: In any event, what he has said has been brought to the attention of the jury. I don't see any point in repeating.

Q Is that because Mr. Merced was in pain and anguish?

A That's right. I lost my finger. I know how he feel.

MR. SHANDELL: My objection stands, your Honor.

THE COURT: Your objection stands on what basis? I am not sure that I follow you.

MR. SHANDELL: It is my objection that what Mr. Ivone is seeking to put into evidence is not Mr. Herman's statement but Mr. Nelson's statement that Mr. Nelson said he got from Mr. Herman and some others on the basis of apparently what Mr. Herman says he spoke to Mr. Merced in broken English.

To me it is a third-hand and very unreliable piece of hearsay and I make my objection on that ground.

THE COURT: I am not sure it is quite that.

In any event, let me ask you a question before I rule on this, Mr. Herman.

At the time you talked to Mr. Nelson, was anybody else present, any one of your assistants?

THE WITNESS: I don't remember.

THE COURT: Rivera, was he there?

THE WITNESS: At the time he was there, but if he was there exactly the time -- if we was there together, I don't remember.

THE COURT: You don't remember. But you do remember talking to Nelson about what --

THE WITNESS: Yes, what happened.

THE COURT: What Mr. Merced told you.

May I see the proffered exhibit, please, Mr. Ivone?

MR. IVONE: Yes, your Honor (handing).

THE COURT: Mr. Herman, may I show this document to y... which has been marked as Defendant Auto Pak Exhibit A for identification and point out to you the third paragraph, number 3, here.

Read the written material which continues over here to the top of the page and then it has the signature or what purports to be the signature of Nelson. Just read that to yourself, if you would.

(Pause.)

THE COURT: Do you have any difficulty reading Nelson's handwriting?

THE WITNESS: Just this (indicating).

THE COURT: Why don't you continue over there. I think it will come clear to you if you can read the page that follows.

THE WITNESS: Yes.

THE COURT: Did you read it all?

THE WITNESS: Yes.

THE COURT: Is there anything in there that refreshes your recollection as to anything else which Mr. Merced may have mentioned to you personally when you talked to him in the hospital?

THE WITNESS: After we take him to hospital, I went down to the compactor room and I look in the machine and I see there was two, three small pieces of glass on the bottom in the machine.

MR. WILENSKY: I am having trouble hearing.

THE COURT: He says that after he came back from the visit with Mr. Merced he went down and inspected the machine and noticed some pieces of glass.

Is that correct?

THE WITNESS: Yes.

THE COURT: That wasn't really what I was seeking to get.

MR. SHANDELL: May I ask your Honor to instruct the jury to disregard that statement?

THE COURT: Yes, I indeed will, as I was just about to.

Let me repeat: That was not what I was seeking to get. Therefore I will ask the jury and everybody else to disregard what Mr. Herman just said.

My question is, having read this material that you just read, do you remember anything else that Merced said to you other than what you have told us?

THE WITNESS: No.

THE COURT: I am going to overrule the objection

of the plaintiff's counsel and Defendant's A will be received for whatever it is worth.

(Defendant Auto Pak Exhibit A received in evidence.)

THE COURT: Any other questions, Mr. Ivone?

MR. IVONE: Yes, sir.

THE COURT: All right.

BY MR. IVONE:

Q Mr. Herman, you looked into that machine when you returned from the hospital?

A Yes.

MR. SHANDELL: Objection, your Honor.

Q What did you see at the bottom?

MR. SHANDELL: Objection.

THE COURT: I'm sorry.

MR. SHANDELL: Objection.

THE COURT: Overruled.

MR. SHANDELL: This is highly removed in place of time and circumstance including a running compactor.

THE COURT: That may be. It goes to weight. Anyway I hope there will be developed precisely the time. I am overruling your objection. You may argue that but that does not mean it won't come in. Go ahead.

Q Tell us what it is you saw at the bottom of the

machine.

A The machine was clean only was two or three small pieces of glass laying down in the bottom of the machine.

Q When you say in the bottom of the machine, where was the glass as compared to the piston? Tell us, please.

THE COURT: You are looking at Exhibit --

MR. IVONE: I'm sorry, your Honor. Defendant's Exhibit B, your Honor.

A I call this bottom here, where is the cam. That is the bottom, all the way at the bottom of the barrel and the piston go over.

Q In other words, the piston would have gone over these pieces of glass?

A Yes. The piston was in the position like now and the glass was somewhere here.

Q You are pointing to where there is a beer can in the picture?

A Yes, that's right.

THE COURT: How long after the accident, approximately, was this when you went down and looked and saw this glass?

THE WITNESS: I would say half-hour.

THE COURT: A half-hour later?

THE WITNESS: Yes. I take him to the hospital.

THE COURT: It isn't too far from your place to Beekman Downtown Hospital?

THE WITNESS: One block.

THE COURT: Anything else, Mr. Ivone?

MR. IVONE: May I read that statement into evidence?

THE COURT: You mean you want to read it to the jury?

MR. IVONE: Yes.

THE COURT: Surely.

(Defendant's Exhibit A read to the jury.)

MR. IVONE: Your Honor, it is a form and I will read the printed portions along with the handwritten portions.

(Counsel read from Defendant's Exhibit A to the jury.)

MR. IVONE: Your Honor, there are certain other items on here but I don't believe it is necessary to read them at this point.

THE COURT: Whatever you choose.

Mr. Kohler?

MR. KOHLER: No questions, your Honor.

MR. ISAAC: No questions at this time, your Honor.

THE COURT: Mr. Regan?

MR. REGAN: I have a few questions, your Honor.

CROSS EXAMINATION

BY MR. REGAN:

Q Mr. Herman, you were given a booklet, I believe, of instructions on the operation of the compactor.

THE COURT: You mean the one that was shown to him when he was on the stand?

MR. REGAN: Yes, your Honor.

A Yes.

MR. REGAN: Mr. Ivone, will you concede that this

is a booklet published by your company?

MR. IVONE: Yes, of course I concede that. It looks like this, your Honor. It is an orange book, orange and white, with a little hippo in the middle of it.

MR. REGAN: To save time, will you concede that any oral instructions that were given by Universal Thermal were in conformity with this booklet?

MR. IVONE: I don't know how I can even answer that, your Honor. I don't know.

Q Do you know, Mr. Herman, what oral instructions were given? Could you tell us any oral instructions that were given?

A I didn't understand that.

THE COURT: He doesn't understand you, Mr. Regan. You mean oral instructions by the Universal men at the time the equipment was first started up?

MR. REGAN: Yes.

THE COURT: Well, help him out so he understands you.

Q You mentioned before when Mr. Ivone was questioning you that the Universal Thermal people, the ones that put in the compactor, gave some instructions.

A Give us instructions.

Q They gave you this book that was put out by Auto

Pak?

A Yes.

Q It is a service manual, instruction manual? Is that right?

A Yes.

Q Did they also tell you some things about the operation of the compactor?

A Yes, they do.

Q What did they tell you, do you know?

A How it is operated.

Q Was that in conformity with this instruction manual?

MR. SHANDELL: Objection, your Honor.

MR. ISAAC: Objection, your Honor.

THE COURT: Yes. I don't think we have it in the record that he necessarily checked what they said in the instruction maunal. For that reason alone I will sustain it.

Q What did they tell you?

A To show us what the switches, how it operates, what is the chute door, how we can prevent safety, you know, accidents.

Q And you have read this instruction manual?

A I read this, too.

Q And is that what this says?

MR. IVONE: Objection, your Honor. It speaks for itself.

MR. ISAAC: I object also.

THE COURT: I think I am going to sustain the objection.

MR. REGAN: Your Honor, all I am trying to do is show that everything that Universal told Southbridge came from Auto Pak.

THE COURT: Whatever you are trying to do is not what I am ruling on. What I am ruling on is the methodology. I don't quarrel with you but I don't think this is the way to do it.

MR. REGAN: That is all I have, Judge.

THE COURT: All right, Mr. Wilensky?

MR. WILENSKY: I have no questions of this witness, your Honor.

THE COURT: Redirect, then, if any?

MR. SHANDELL: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. SHANDELL:

Q Did you tell Mr. Nelson that Mr. Merced had told you he was trying to clean the machine?

A I tell Mr. Nelson what Mr. Merced tell me.

MR. SHANDELL: Move to strike the answer as not

responsive.

THE COURT: Yes, but, again, I am not sure that the witness heard you. Would you please repeat and raise your voice just a bit?

Q Did you tell Mr. Nelson that Mr. Merced told you he was trying to clean the machine when the accident happened?

A Yes.

Q Did this machine need to be cleaned?

A No. I tell him he try to reach some pieces of glass from it.

Q Is that the same thing as cleaning the machine?

A No. It is not the same thing.

Q So you tell Mr. Nelson that Mr. Merced told you he was trying to clean the machine?

A No, I don't tell him.

Q Now, do you remember when somebody representing Southbridge Towers came to you and asked you in detail how the accident happened -- what you knew about the happening of the accident?

A Somebody from Southbridge Towers?

Q Yes.

A Yes. It was Mr. Nelson.

Q Somebody other than Mr. Nelson, an investigator who took a statement from you.

A Some lawyer.

THE COURT: Some lawyer came and saw you?

THE WITNESS: Yes, to ask me.

THE COURT: All right.

Q And you gave a long statement about how the accident happened?

A I answer some questions what he ask me.

Q Do you remember giving him a long statement that you signed?

MR. ISAAC: I object to the form of the question, your Honor.

THE COURT: Yes. In other words, Mr. Shandell, do you mean a statement in writing? People use the word "statement" differently.

Q A written statement, sir, do you remember giving a written statement about this case?

A Yes, I do.

Q When you gave that written statement did you sign it?

A Sure.

Q And is this a copy of the signed statement you gave (handing)?

A Yes, sir.

Q Does it bear your signature?

A Yes.

MR. SHANDELL: May we mark it for identification, sir?

THE COURT: Please do.

(Plaintiff's Exhibit 5 was marked for identification.)

Q When Mr. Merced spoke to you in the hospital the day he had his hand taken off, did he shout to you?

THE WITNESS: Your Honor, he does not have to show me the hand. I see the hand.

THE COURT: No, no. The question is apparently, he wants to know if Mr. Merced had shouted at you.

Is that correct?

MR. SHANDELL: Yes.

A No.

P.M.

T-4B

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Q How could you hear him if he didn't shout?

MR. IVONE: Your Honor, I object to this. Quite frankly, I don't understand this.

THE WITNESS: I don't understand.

THE COURT: The witness doesn't understand.

Let's rephrase it this way: Did you have any difficulty hearing Merced there in the hospital.

THE WITNESS: No..

THE COURT: Next question.

Q Well, sir, did you gather that what Mr. Merced told you was that a bottle had been stuck?

A No.

Q It wasn't a bottle that was stuck?

A No, he don't tell me.

Q He didn't tell you about a bottle that was stuck?

A No.

Q Well, when you gave this statement to the lawyer who came to you and asked you to tell him all that you knew about the case, from Southbridge Towers, did you tell the lawyer that what Mr. Merced had told you was that a bottle had gotten stuck?

MR. IVONE: Objection, your Honor. The statement is not in evidence.

THE COURT: I know it is not in evidence but I will

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allow him to answer that.

However, do you want a chance to read that again, Mr. Herman?

THE WITNESS: Yes.

THE COURT: Take your time.

MR. IVONE: If your Honor please, furthermore Mr. Herman is a witness called by the plaintiff. If he wants to impeach him --

MR. SHANDELL: On cross-examination he made the witness his own witness, your Honor.

THE COURT: Yes. This subject was gone into by you, Mr. Ivone. You made this gentleman your own witness for this purpose, which is perfectly proper, and nobody objected. Now, he will have the right to go through the statement and, in effect, cross-examine him about this.

Do you want to offer the statement in evidence?

MR. SHANDELL: I would like an answer to that question.

THE COURT: While he is reading that do you want to offer it in evidence?

MR. SHANDELL: Not at the moment, your Honor. I will get to it.

(Pause.)

THE WITNESS: There was so much confusion with the

accident, you know.

THE COURT: Repeat the question, Mr. Shandell.

Q Did you tell the lawyer from Southbridge Towers who came to take this long statement from you that what you understood from Mr. Merced was that he tried to get out a bottle that was stuck?

A It's possible he tell me, you know. But when I checked the machine there was no bottle. There was just two pieces, three pieces of glass there, small pieces.

MR. SHANDELL: Your Honor, I move to strike out everything after "it is possible."

THE COURT: I agree.

Q When you made that statement, sir, did you try to tell the lawyer from Southbridge Towers everything you knew about the case?

MR. IVONE: Objection, your Honor.

THE COURT: No, I will allow it.

(Pause.)

A Yeah. There was trouble with the switch over there with the same machine a month before.

MR. SHANDELL: I move to strike the answer as not responsive, your Honor.

THE COURT: Yes, I agree. But may I suggest that the way to do this is to put the question you really want

answered.

Q Did you ever tell that lawyer who came to take that long statement from you that you had gone back and found glass in the bottom of the machine?

A I don't remember.

Q Well, look at it. See whether it says anything about that. Does it say anywhere in that statement there that you found glass at the bottom of the machine?

A It just say bottle.

Q It says a stuck bottle; is that right?

A Yeah.

Q It says that Merced told you there was a stuck bottle; is that right?

Sir, would you answer the question?

A Yes.

Q It says Merced told you there was a stuck bottle?

A Yes.

Q Now, sir, I take it you wouldn't know how to say bottle in Spanish any better than glass; is that true?

MR. ISAAC: Objection, sir.

THE COURT: Sustained. We have already covered the language point.

Q In broken English could you tell the difference when Mr. Merced was saying in the hospital vidrio or bottle?

A I understand broken glass.

Q Doesn't it say in the statement stuck bottle?

A Yeah, they say stuck bottle here, yeah.

MR. SHANDELL: I offer the statement in evidence, your Honor.

MR. ISAAC: May I see it, please?

(Pause.)

THE COURT: Gentlemen, what is your position?

MR. IVONE: No objection, your Honor.

THE COURT: All right.

MR. ISAAC: Your Honor, I haven't seen this. Would you bear with me a few moments?

THE COURT: Well, I would rule so far from what I have heard that it will be received in respect to the defendant Auto Pak. We will reserve, however, the opportunity for you to look at it. But I am surprised you haven't seen this prior to trial.

MR. ISAAC: No, sir, I have never seen this. And I contest that a lawyer from Southbridge took this statement. That is why I want to read it. I don't know what it is.

THE COURT: We will reserve, as I said, to your client and anybody else, Mr. Isaac, until you have had a chance to look at this. But Auto Pak having not objected, we will receive it as to them.

Now, I have another case waiting, Mr. Shandell. How much more questioning do you have in respect to the witness?

MR. SHANDELL: I think I am through, your Honor.

THE COURT: Since Mr. Herman is in the control, I assume, of Southbridge we will excuse him now subject to possible recall, Mr. Isaac, if you want him.

MR. ISAAC: Thank you very much. I can reserve my rights to go into this matter and if it should get to that particular point in time, some later point in the case, I will be permitted to go into this in addition to other evidence if necessary; is that all right, Judge?

THE COURT: Yes.

MR. ISAAC: Thank you very much.

THE COURT: Ladies and gentlemen, we will suspend for the evening. I want to remind you of a simple obvious fact, but it is important to keep in mind, and that is though we have made some progress we haven't heard everything yet. In fact, we haven't even heard all the plaintiff's case.

My advice to you is that you put the case out of your minds entirely and don't talk about it with anybody else. It is only your business. Keep an open mind because we haven't heard all the evidence, and the contentions yet by any means.

Now, the normal court day, which we will be following tomorrow, by the by, we start at 10 o'clock. We can't start if one of you is late or if one of the lawyers or the judge is late. We all have to be here. So please be in the juryroom a few minutes before 10 so we can hopefully get a prompt start at 10.

Without further ado I will say goodnight to all of you.

JUROR NUMBER 4: Might I ask what is normal closing time?

THE COURT: Between 4:15 and 4:30. If there is any change that I know about in advance, I will consider it my duty to warn you in advance. Sometimes things happen though, that I don't know about until they happen, but normally we work a 10 to 4:15 to 4:30 day in this case, unless I shall advise you otherwise in advance.

Very good. See you tomorrow.

You are excused, Mr. Herman, subject to possible recall by your own company's lawyer.

THE WITNESS: Thank you.

THE COURT: Thank you, sir.

(Witness excused.)

(Ajourned to February 4, 1975, at 10 A. M.)

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FELIX MERCED, et al.

v.

AUTO PAK COMPANY, INC., et al.

73 Civ. 1621

February 4, 1975
10:15 a.m.

- - -

(Jury not present.)

THE COURT: Gentlemen, may I state on the record one of our jurors, I believe the alternate, two or three minutes ago was still not here.

In the meantime, while we are waiting, Mr. Shandell, do you have another witness or what's your pleasure here this morning?

MR. SHANDELL: Your Honor, my next planned witness was Mr. Jordan Danziger, who was subpoenaed to attend this trial. Mr. Danziger is an officer of Universal Thermal Corporation. I don't see Mr. Danziger or his lawyer here. Mr. Regan seems to be misring also.

MR. WILENSKY: He just stepped out.

THE COURT: Mr. Danziger is here.

MR. SHANDELL: I have a witness, your Honor.

(Jury enters courtroom.)

THE COURT: Good morning, ladies and gentlemen.

Where is your witness? We seem to be having a little trouble here. Again, Mr. Regan is not among the present.

Will somebody do us the favor of stepping out -- come, Mr. Regan. 10 o'clock is long passed, sir.

MR. REGAN: Your Honor, I have been here for some time.

THE COURT: I was not aware of that. I apologize but we are having a little trouble collecting ourselves once again this morning.

Now, where is the witness?

MR. SHANDELL: Mr. Danziger.

J O R D A N D A N Z I G E R, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

MR. SHANDELL: If your Honor please, may we exclude the witnesses again?

THE COURT: You certainly may, but I just don't know who is a witness and who is not.

MR. REGAN: Witness to what -- to the accident?

MR. SHANDELL: Witnesses who will be called at the trial.

MR. REGAN: Your Honor, I object to that.

THE COURT: First of all, gentlemen, as I just tried

to say, I don't know if there are any witnesses here. I don't understand either one of you, frankly.

Are there any witnesses in the courtroom?

MR. SHANDELL: I see some people in the room whose faces I don't recognize. I assume the attorneys for the defendants know whether they are witnesses or not.

THE COURT: I didn't just direct this to you, Mr. Shandell. I don't know what to say to you people.

Again, I repeat, to all of you collectively, are there any witnesses, to your knowledge, in the courtroom?

MR. IVONE: Your Honor, I do not know. I do not know the people in the courtroom.

MR. SHANDELL: This gentleman in the blue jean jacket may be a witness.

MR. REGAN: He is a potential witness but he certainly did not see the accident.

THE COURT: I suggest that we go ahead and not make a contretemps with this. If he is not a witness to the accident, I don't see any problem.

MR. SHANDELL: He may be a witness to the events that surrounded the accident.

THE COURT: Mr. Shandell, I point out to you, as you surely know, that I have not a clue as to who these people are. This is a public room. I am told he may be a witness. I do

not see any real problem. But if you feel there is a problem, I suggest you consult with the lawyer who indicates that he knows this man and find out. Then if you feel that this has to be gone into, you have a right to tell me, but I cannot play from no information at all.

You don't seem to have the foggiest of the fact that I don't know the witness. You surely can understand that simple fact.

You want to consult with Mr. Regan here and then if you want to make an application, I will hear it.

MR. SHANDELL: Your Honor, if there is a fuss about it, I will pass it.

THE COURT: Mr. Regan is coming up. Maybe you can consult with him.

(Counsel confer.)

MR. SHANDELL: Very well, your Honor. We will proceed.

DIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Danziger, are you associated with the Universal Thermal Industries, Inc.?

A Yes.

Q In what capacity, sir?

A Secretary.

T2

Q Was this a compactor of the extrusion type?

A Yes.

Q Was it designed to perform without manual assistance?

A Yes.

Q Did you at Universal Thermal in connection with your installation work on behalf of Auto Pak receive from Auto Pak any instructions as to how this machine was supposed to be operated?

A Yes.

Q I show you Plaintiffs' Exhibit 4 and ask you if that was the instructions you received from Auto Pak?

A Yes.

MR. IVONE: What exhibit is that?

MR. SHANDELL: 4.

Q Did you ever receive from Auto Pak any other instructions about the operation of that compactor other than Plaintiffs' Exhibit 4?

A Not that I know of. You mean written?

Q Written instructions.

A Not that I know of.

Q Did you ever receive any oral instructions from Auto Pak about the operation of the machine?

A From time to time through the years there was

a lot of conversation back and forth in which there was undoubtedly some type of instruction clarifying some other details.

Q Did you ever speak to a man by the name of Milton Klar?

A Yes.

Q Did you ever have a conversation with Mr. Klar about the workings of this Auto Pak Gobbler?

A Yes.

Q Did you folks at Universal Thermal install the compactors at Southbridge Towers?

A Yes.

Q In connection with the installation of those compactors at Southbridge Towers did you give any instructions to the people of Southbridge Towers as to how to operate this machine?

A Yes.

Q When was that done?

A I don't know the date.

Q Was it the time when the machines were being installed?

A Ye

Q Did you ever give any instructions to Southbridge Towers concerning blo kages that might occur in the

operation of the machine?

A I don't know if any of our employees did.

Q Did you ever recommend to Southbridge Towers any instructions concerning the recommended use of this machine, specifically, about how many hours it was to work or whether it was to be turned on or off or to run continuously?

A Yes.

Q What did you tell to Southbridge Towers?

A You mean me personally?

Q Universal Thermal.

A Just in actual words I don't know because it was just a verbal thing and I wasn't there.

Q The substance, sir.

A All I could tell you is what we generally tell the people where we place the compactors.

Q What did you tell them?

A That if at any time they had to do anything on the compactor or they were in doubt about anything, to pull the main line switch and call the company, meaning whatever company is servicing it at the time.

Q Now, sir, did this machine have any switches to turn it on and off?

A Yes.

Q You referred to the main line switch?

A Yes.

Q Where was that located?

A On the wall near the machine.

Q Did this machine have a door to the hopper?

A Yes.

Q How far from the door to the hopper was it to the main line switch on the wall?

A It varies in various installations. I don't know about the particular one in question.

Q What is the range of variance?

A Generally between three and fifteen feet, sometimes even twenty.

Q It was your instructions that if something happened with the machine they were to turn off the main line switch and call you or whoever was servicing the machine? Is that right?

A Right.

Q Was there also a switch on the machine?

A Yes.

Q What do you call that switch?

A It is a stop switch.

Q Do you call it a control panel switch?

A The stop switch is on the control panel.

Q Will the switch on the control panel stop the machine from reacting to the electric beam, the eye beam?

A Yes.

Q Do you remember testifying in an examination before trial in this case under oath, sir?

A I do.

Q Do you remember saying this about the control panel switch, page 19 --

MR. REGAN: I must object to this, because the examination before trial was only received by me yesterday. The witness has never executed the examination or even seen it.

THE COURT: I don't know anything about that, Mr. Regan. It may be you may have a stipulation about his not signing. I wouldn't know. Again you gentlemen seem to think I am privy to your business, which I am not.

What about that, Mr. Shandell?

MR. SHANDELL: This examination before trial was just transcribed and recorded the end of last week. We all just received these copies.

THE COURT: Well, do you agree that Mr. Danziger has not seen it?

MR. SHANDELL: Mr. Danziger has not had the opportunity to sign this.

THE COURT: Very good. If you want to ask him anything, would you please show it to him and ask him if he recalls it and whether that is what he said.

MR. SHANDELL: If I may have a moment. I may have a Xerox copy.

MR. IVONE: Since he is being shown a particular page, may he be shown it from the very beginning of the line of questioning?

THE COURT: Can we proceed, please.

Q Mr. Danziger, at that examination before trial were you asked these questions and did you give these answers under oath:

"Q Can you tell me whether this machine is designed to enable the electric eye to operate while the machine is in the off position? In other words, is it designed to cast a beam while the switch is in the off position?

"A Now it depends which switch.

"Q Well, let's say the control panel switch. Will that deactivate the electric beam when it is in the off position?

"A I am not sure."

Did you say that?

A Yes.

Q And your instructions to Southbridge Towers were

that if anything happened they were to throw off the wall switch and call the service people?

MR. ISAAC: That wasn't the testimony.

THE COURT: You may be right, but I think that was a fair question.

A There is a difference in the question that he read from, this thing and the question he asked me.

Q Were your instructions to Southbridge Towers--

A I'm talking about this one; I'm talking about the first one.

Q You say I did not correctly read the question.

A You read it, but it is not the same as the question you asked me before you gave me this book.

Q I see. Oh, sir, did you say that your instructions to the Southbridge people were that they were to throw off the wall switch and call you?

A I said that was the general instructions we gave most people.

Q Thank you. Did you ever give any instructions to Southbridge about whether they were to run this machine continuously, or that they should or may run it for a certain number of hours at a time? Did you ever give them any instructions along that line?

A I don't know.

Q In your experience, did you experience in the use of this compactor that blockages or jamups occurred above the compacting cylinder?

A It happens in all compactors from time to time.

Q The cause of that, is that called bridging?

A It happens by bridging, it's called bridging.

Q Are there other causes of it?

A Just a big object being thrown in or a malfunction of the machine, the ram doesn't operate, or it can just keep building up.

Q But other than the fact that the ram doesn't operate --

A Or if the machine shuts off.

Q And if it snuts off, did you experience that trash or garbage that came down the chute of a compactor such as this would be subject to jamups and obstructions caused by arching or bridging of the garbage?

A Yes.

THE COURT: Incidentally, the word "bridging" is constantly used here. Have you ever heard that before in this connection, Mr. Danziger?

THE WITNESS: Yes, it's a common term used in the trade. When trash falls in a position to form an arc or a bridge over the compacting chamber, the rest of the trash falls on top of it, can't come down because it's supported by this bridge.

THE COURT: In other words, all it really means is that, due to the size of objects of garbage or refuse that are thrown in here, they can catch one on the other end cause a bridge?

THE WITNESS: Right, right.

THE COURT: Fine, thank you very much.

Q When this bridging occurs, is there a manner of clearing this obstruction?

A Yes.

Q In your experience, how was this obstruction cleared when it occurred?

A You said how was it cleared? You mean in this particular building?

Q How did people who had this problem with Auto Pak compactors usually deal with it in your experience?

A They all seemed to devise their own ways. Some take a poker, some sort of a stick or poker, an iron rod, and reach into the compactor hopper door with the stick and hit the refuse. All you have to do is just generally touch it a little bit with the stick and it falls down, it breaks the bridge.

Some people found if they put -- if it gets jammed up in the chute, they put water on it to make it heavier and fall down. All different methods that people devised.

Q Did you ever communicate to Mr. Klar that in your experience the people who were using this compactor under chutes were experiencing bridging problems which require them sometimes to open the hopper door and hit the garbage with a stick or poker?

A I don't know if I had to tell them. He was quite aware of it all the time.

Q Did he communicate this to you?

A Yes.

Q Did he ever recommend to you any means of coping

with this problem?

A Not that I know of.

Q Would this bridging, in your experience, be more likely to occur when a machine had been turned off and garbage had been allowed to build up in the chute?

A Yes.

Q Did you and Universal Thermal ever give any instructions to Southbridge Towers about leaving the machine on all the time in order to prevent bridging?

A It's very possible. I don't know for sure.

Q Would you turn to page 67, Mr. Danziger?

MR. IVONE: What page was that, please?

MR. SHANDELL: Page 67.

A 67?

Q Yes.

A I go up to page 31.

Q I will show you the real copy. I don't know what happened to the rest of the Xerox.

MR. SHANDELL: May I approach the witness, if your Honor please?

THE COURT: Yes, sir.

Q Were you, Mr. Danziger, asked this question commencing at line 2:

"Q Mr. Danziger, did you give any instructions to

Southbridge Towers with regard to whether the machine should be turned on or off at various times?"

Your answer: "Not that I know of."

Did you say that?

A Yes.

Q Did you also say, in response to the next question:

"Do you know of any such instructions given about that by any of your men to Southbridge Towers?"

Your answer: "Not that I know of."

A Right.

Q Did you say that?

A Yes.

Q Did this machine, this compactor come equipped with a safety door on top of it?

A Yes.

Q Did you tell me before that this was an open hopper?

A When you asked me about the machine itself, to describe the machine, I did.

Q I ask you again, did the machine come equipped with a door?

A The machine doesn't come that way, no.

Q Was there some door that was put into this installation?

A Yes.

Q Was that a fire door?

A I don't know. We didn't install it.

Q Do you know how it worked?

A On this particular installation, I don't know.

Q You don't know? Do you know how it was moved?

A On this one, Idon't know. Some are manual, some are hydraulic. I don't know what this was.

Q Were they designed to respond automatically to fire in the chute by opening on some kind of spring?

MR. IVONE: I am going to object to this, your Honor.

A I don't know if this was --

MR. IVONE: He says he doesn't know.

THE COURT: He has told you he doesn't know the installation here.

Q In any event, if there was some door installed in these buildings, were these compactors that could be shut to keep stuff from coming down the chute, you didn't install it at Universal Thermal?

A No.

Q Did Auto Pak install it?

A It might have been done for Auto Pak. Auto Pak themselves didn't do any work on the door.

Q What has your experience been with the operation of these compactors?

MR. IVONE: Your Honor, I am going to object to that.

THE COURT: Yes, sustained. That could mean most anything, anywhere, any time.

Q The chamber, the container of the compactor had a door; is that right?

A Yes.

Q A hopper door?

A Yes.

Q Was that hopper door equipped with an interlock?

A No.

Q Did you give any instructions -- by you I mean you and Universal Thermal -- to Southbridge Towers about what to do about the bridging?

A I don't know.

Q Did Auto Pak give you any instructions about what to tell the customers who were having these machines installed about bridging?

A Will you repeat that?

MR. SHANDELL: Would the reporter please read the question?

(Question read)

A Not that I know of.

Q I show you this document, sir, and ask you whether that is a brochure distributed by Auto Pak in connection with the distribution of these Gobblers.

A One of the models here is the Gobbler, yes.

MR. SHANDELL: I offer it in evidence, if your Honor please.

THE COURT: While they are looking at that, Mr. Shandell, may I please have the opportunity of looking at Plaintiffs' Exhibit 4, if you are not using it?

(Exhibit handed to court)

MR. IVONE: Your Honor, this is a brochure that was put out by Gulf & Western, not by Auto Pak, your Honor, and I must object to it. It would have had to be subsequent to our going out of business.

THE COURT: Beyond that, Mr. Shandell, I don't see what probative value it has. It is duplicative of evidence already in the case, I believe.

MR. SHANDELL: I think it is not. What I offer it for is a statement in there about the problem we have been discussing now.

MR. IVONE: I will object to comments concerning it specifically because --

THE COURT: I understand, Mr. Ivone. As soon as you gentlemen have finished reading it -- by the way, I assume you all have copiesof this material, again, but apparently you do not.

MR. IVONE: That material I do not have.

THE COURT: Sir? I didn't hear you?

MR. IVONE: I said I do not have that particular brochure. One of the reasons is it came out after my company was bought out.

THE COURT: I don't quarrel with that, Mr. Ivone. I would have thought you would have seen it whenever it came out. In any event, may I see it, please?

(Document handed to the Court.)

THE COURT: On this state of the record, I am going to sustain the objection, Mr. Shandell. I point out to you that we don't know anybody ever received this, we don't know whether this is the model in question, and so on and so on.

I agree that the record could be rectified, but in the meantime the objection is sustained.

We will mark it Plaintiff's Exhibit 6 for identification.

(Plaintiff's Exhibit 6 marked for identification.)

THE COURT: Incidentally, Mr. Danziger, while we are on that subject, could you tell us, if you know, what model number of the Gobbler, so called, was installed over here in this building, number 7, Southbridge?

THE WITNESS: It is the 16.

THE COURT: It is the 16?

Therefore, I have in my hand Plaintiff's Exhibit 16, which is the service manual for model 16 and 20, is that correct?

THE WITNESS: Yes. The only difference is the size of the tube. One is 16 inches and the other is 20 inches.

THE COURT: Anything else, Mr. Shandell?

MR. SHANDELL: Yes, your Honor.

BY MR. SHANDELL:

Q Sir, I show you this brochure and ask you whether this is a brochure about the Gobbler-16 and 20?

A Do you imply the whole thing is about the Gobbler 16 and 20?

Q Is it partly about the Gobbler-16 and 20?

A Yes.

Q Tell me, sir, did you ever receive a brochure like that from Auto Pak in connection with your installation work and your work dealing with customers?

MR. IVONE: I must respectfully object. Again, this is something from Gulf & Western to my client going out of business.

THE COURT: That may well be, Mr. Ivone, but since the record is devoid of any clarification on this or some other matters, for that matter, I see nothing wrong with the question. I am going to permit Mr. Shandell to ask it. It may turn out as you say, but I don't know that yet.

MR. IVONE: If your Honor will look at the paper, I believe it is something like October of 1972, or something like that.

THE COURT: I see nothing wrong with the question. I see no prejudice to your interests at this point. Let's let the plaintiffs' lawyer develop it a little. I don't know that

he's right, but let's let him develop it.

Go ahead, sir, will you?

A I think the question was did I receive it from Auto Pak?

Q Yes.

A I received it from Gulf & Western.

Q Did Auto Pak ever give you any promotional literature of like kind about this machine?

A Very little.

Q Let me ask you this:

When did you receive that from Gulf & Western?

A I don't know the date. It was after they took over from Auto Pak and moved the plant.

Q How long after?

A I don't know.

Q Within six months?

A I would rather say within a year. I am not sure when it was.

Q Within a year. Do you remember the date when Gulf & Western took over from Auto Pak?

A No.

Q In any event, you got a brochure such as Plaintiffs' Exhibit 6 for identification within a year after Gulf & Western took over from Auto Pak?

A I remember seeing it.

Q Now, sir, do you know what the compaction rate -- withdrawn.

Was this compactor a slow or a fast machine?

A Slow.

Q And do you know what the compaction ratio was?

A It varies considerably.

Q From what to what?

A It depends entirely on the condition of the garbage, of the trash that's in it.

Q Would you explain that, sir? Did you want to finish the answer? Please do.

A It could go from zero to seven to one, possibly even nine to one.

Q And you said something about it depending upon the kind of garbage?

A Type of trash.

Q Explain that.

A Some trash, let's say it's wet garbage, comes down and it's not only the type of trash, it's the prime of the extruding cylinder. If it is a material that is packed tighter in the extruding cylinder, then subsequent compaction will be greater.

If it lays loose in the extruding cylinder, it will

be less -- there will be less compaction. When you first start a machine up, there is hardly anything because the garbage falls down and it just pushes it through. You have to restrict it in some way to get what we call a priming machine. So it depends. Some buildings have different types. Some buildings have more newspapers, some have more food stuffs, more liquids. It varies considerably.

Q Which compacts better?

A About half-way inbetween the whole business.

Q And if you have bulky objects that are not dense, that reduces the amount of compaction that will take place, is that what you are saying?

A If it was a paper object, it would depend upon how much moisture was in it. It is not the size that does it, that is the governing factor. It is more the consistency.

Q Would lightweight material compact less than denser material?

A As far as the compacting ratio, the weight of the material has not got a bearing on it.

Q Could you push garbage into the compaction chamber with a stick to hasten its operation?

A You wouldn't make the compacting ratio any different.

Q Would you increase the speed of the machine?

A No. The machine goes one speed all the time.

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Q Could you increase the speed of the disposal of garbage?

A Yes, very possibly.

Q And under what circumstances would pushing the garbage down with a stick increase the speed of the disposal of garbage?

A If the garbage was such that it wouldn't readily fall into the chamber and you helped it to go in, you would increase the speed. That is, the rate of compaction, not the ratio.

Q In your experience, sir, would material falling down into this hopper -- withdrawn.

This machine, does it have a deflection plate?

A Yes.

Q What is a deflection plate?

A It's a steel plate, it's at least 3/8 of an inch thick, as wide as the machine, and when the trash falls down the chute at some time in its travel it is supposed to hit this plate and it would tend to break bottles or breakable objects such as that that might create a large volume and cause difficulty in compacting.

Q And after it contacts the deflection plate, what does the garbage do next?

A It falls into the receiving chamber.

Q Is this deflection plate at an angle?

A Yes.

Q Where with regard to the deflection plate is the chute?

A Different places in different installations.

Q Does the location of the chute with regard to the deflection plate have some effect on the tendency of bridging and blocking to occur?

A Yes.

Q And how is that?

A The best place to have it is directly under the chute. The further away you have it, the more resistance you offer to the trash and therefore there is more probability of building up.

Q Did you ever advise anybody -- by "you," I mean at Universal Thermal -- at Southbridge Towers about this?

A I don't know.

Q Do you know what the chute location with regard to the deflection plate is in under the number 7 at Southbridge Towers?

A No.

Q Are there any drawings that you have in your possession at Universal Thermal which would show this?

A I don't know.

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Q Did you ever have any written communication with Auto Pak about instructions for operating this machine?

MR. IVONE: Your Honor, is this something other than the instructions that we have been discussing?

Q Other than the one book that is in evidence.

A Possibly. I don't know for sure.

Q Have you looked in your office for those communications?

A No.

Q Is this a copy of the subpoena that was served on Universal Thermal?

A Yes.

MR. SHANDELL: I offer it in evidence, if your Honor please.

THE COURT: I don't know what your purpose is but I will deem it part of the record. In any event, it is a subpoena issued out of the clerk's office.

What is the point? Do you feel you would like Mr. Danziger to look?

MR. SHANDELL: I would like Mr. Danziger to explain the non-production of these documents.

THE COURT: He told us he received the subpoena a short time ago and did not have a chance to look. I would support you if you want him to look and report to you later.

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MR. SHANDELL: May we have that?

THE COURT: I would think that would be more practical than the marking of a lot of documents which we already know.

Would you be good enough to look at your files, when you get a chance, to see if there is anything else that might pertain to that subpoena that they served on your office?

THE WITNESS: Yes, your Honor.

May I explain something about that? Universal Thermal is no longer in existence as a company and everything was packed away.

THE COURT: All in a warehouse?

THE WITNESS: I cannot go to a file and pull it out. I just got the thing last night. It is difficult to get this thing together.

THE COURT: May I make a suggestion under these circumstances to you, Mr. Shandell?

MR. SHANDELL: Yes, your Honor.

THE COURT: May I suggest that you state quietly to the witness what you are looking for and I am sure within reason he will look for it, if he can do so.

MR. SHANDELL: Under those circumstances and with your Honor's suggestion, I have no further questions of Mr. Danziger at this time.

THE COURT: Mr. Ivone.

Before Mr. Ivone begins, what do you do now? You say Universal is no longer in business?

THE WITNESS: Before Universal Thermal and after, we also had Universal Elevator Company. Thermal was a kind of offshoot. It was a separate company but the same principals involved.

THE COURT: So now you are with the parent company again?

THE WITNESS: STill.

THE COURT: What do you do for them?

THE WITNESS: Chief engineer and vice president of the company.

THE COURT: Your offices are here in Manhattan?

THE WITNESS: Yes.

THE COURT: Forgive me, Mr. Ivone. Go ahead, sir.

CROSS EXAMINATION

BY MR. IVONE:

Q Mr. Danziger, you have testified earlier that turning off the panel switch would prevent the operation of the electric eye, and then counsel asked you to read from your deposition, I believe, at page 19.

Do you still have the deposition there in front of you?

A I have. Could I --

Q He asked you if you had given the following answers to the following questions. Page 19, line 2:

"Q Can you tell me whether this machine is designed to enable the electric eye to operate while the machine is in the off position; in other words, is it designed to cast a beam while the switch is in the off position?

"A Now, it depends which switch.

"Q Well, let's say the control panel switch. Will that deactivate the electric beam when it is in the off position?

"A I am not sure."

And you indicated that you gave those answers to those questions.

Now, if you turn to page 18, Mr. Danziger and starting with line 9:

"Q Does this machine have a switch?

"A Yes.

"Q Where is the switch located?

"A There is one on the machine on a control panel and there is one on the wall, very close proximity to the machine.

"Q When the switch is in the off position, is it possible for this machine to operate? Is it designed to operate when the switch is in the off position?

"MR. REGAN: Which switch?

"A No, either.

"Q That would be true of either switch of those switches that you mentioned?

"A Yes.

"Q Is the machine designed to operate by the electric eye when the switch is in the off position?

"A No."

Did you give those answers to those questions?

A Yes.

THE WITNESS: Your Honor, these two separate sets of questions appear to be the same but technically they are different.

THE COURT: How so?

THE WITNESS: Could I explain the operation of this particular thing?

THE COURT: With Mr. Ivone's blessing, I think you could. Would you permit him to explain?

MR. IVONE: Of course.

Q Proceed.

A The electric eye functions by a light beam. That unit determines whether the machine should get a signal to operate or not, whether there is any trash hin the machine. The switch that is in question on the machine, the stop switch,

would keep the machine from running if you turn it off no matter what you do to the electric eye but it wouldn't necessarily turn the light beam off. The light beam might be there and not do anything. It wouldn't allow the machine to start.

So in one case you asked me if it would stop the machine, in the other case you asked me if it would turn out the light. It probably would not. I don't know if it would turn out the light or not, but it would keep the machine from running.

Q So that we call understand it clearly now, Mr. Danziger, the master switch on the wall, that gives electrical juice to the machine, is that right?

A Right.

Q And that will give electrical juice also then to the electric eye?

A Yes.

Q And if that creates a beam, that electric eye, it will create it if the master switch is on, is that true?

A Yes.

Q However, the control panel switch, where there is a switch on the side of the machine, if that is in the off position, even if the electric eye beam is on the ram, however, does not go back and forth?

A Absolutely.

Q So that if a person wants to put his hands into the hopper and rummage around down at the bottom for some purpose or other, he can shut that machine off by turning off the control switch and even though the electric eye beam may still have the beam on, the ram will no longer move, is that right?

A Absolutely.

Q With respect to any purpose, any person who wants to get something out of this machine, is it accepted practice to put his hand into the machine when the machine is in full operation?

A No.

MR. SHANDELL: Objection.

THE COURT: I will allow that to stand.

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Q Let me ask you, Mr. Danziger, if that is not the proper practice --

THE COURT: I can't hear you, please.

Q If that is not the proper practice, what is the proper practice then, if you wish to remove something from inside the machine? What is the proper practice?

MR. SHANDELL: Objection.

THE COURT: No, I will allow that.

A When a cutoff door is -- exists on the installation, the first thing is to close the cutoff door, shut the stop switch on the machine and the main line switch on the wall, and then do whatever -- if you have to get into the machine for some reason.

THE COURT: May I ask you to tell the jury and the court what you mean by a cutoff door? Is that the door up on top?

THE WITNESS: This door that keeps the refuse from coming down the chute, because although you stop the machine, you could get your hand cut off by something falling down, bottles.

THE COURT: Falling down, but you are talking about the door up on top?

THE WITNESS: Yes, yes.

Q And that was that door that you testified to earlier

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in response to Mr. Shandell's question?

A Yes.

Q In other words, if someone up on the seventh floor is throwing down a bottle when you have to be working in the machine, and you have that door shut, that bottle can't come down in; is that correct?

A Yes.

Q And can't hit you on the head?

A Yes.

THE COURT: May I ask you to assume that one were to cut the main switch only. If that were done, I would assume, subject to your correction, that not only would the machine not operate but the electric eye would be cut off.

THE WITNESS: Yes, that's true.

THE COURT: In other words, the main switch on the wall cuts off the entire power source to the machine and any part of its installation which might be electrically operated?

THE WITNESS: There is one thing that remains on. That's the fire prevention, the fire sensing devices, the heat sensing devices on the side.

THE COURT: But excluding the heat sensing devices.

THE WITNESS: Everything else is off.

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THE COURT: Everything else goes off including the so-called electric eye?

THE WITNESS: Yes.

THE COURT: All right.

On the other hand, as you indicated a few minutes ago, it would be sufficient to stop the moving parts of the compactor from operating if you left the main switch on but cut the switch on the machine itself.

THE WITNESS: Yes.

THE COURT: Forgive me, Mr. Ivone.

Q In answer to the question put to you by Mr. Shandell with respect to bridging being more likely to occur if the machine is shut down, let's say shut down overnight, you said it was possible you may have given instructions to Southbridge Towers -- not you personally but some member of your office --

A Yes.

Q -- instructions to leave the machine on. You said that it may have been possible, and then Mr. Shandell read to you again from your examination before trial, from your deposition, he read from page 67, and I don't believe you have the full deposition in front of you. Is that correct?

A No, but --

MR. SHANDELL: The copy I gave him ran out at 31 somehow.

MR. IVONE: May I approach the witness, and he can read from mine, your Honor?

THE COURT: Certainly.

MR. IVONE: Very well.

Q The part that Mr. Shandell asked you to read was as follows, from line 2:

"Q Mr. Danziger, did you give any instructions to Southbridge Towers with regard to whether the machine should be turned on or off at various times?

"A Not that I know of.

"Q Do you know if any such instructions were given about that by any of your men to Southbridge Towers?

"A Not that I know of."

And you said you gave those answers to those questions?

A Yes.

Q If we look further down on this very same page, line 14:

"Q From your personal knowledge, do you know whether any instructions were given by any of your people to Southbridge Towers about leaving the machine on all the time in order to prevent bridging?

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"A Not that I know of specifically."

You gave that answer to that question; is that correct?

A Yes.

Q You do understand that those questions called for your personal knowledge at the time?

A Yes.

Q Now let's go on:

"Q How about generally?

"A Generally we would tell them to leave the machine running."

Did you give that answer to that question?

A Yes.

Q "Q But do you recall telling anybody at Southbridge Towers?

"A As a general rule, we did."

You gave that answer to that question?

A Yes.

Q "Do you recall telling anybody at Southbridge?

"A I don't recall.

"Q You don't know whether Kole told them that?

"A It is possible. I tried to tell everybody.

"Q But you didn't tell anybody at this point?

"A Not that I know of."

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You gave all those answers to those questions?

A Yes.

Q In other words, so that we understand this, Mr. Danziger, you have been testifying as to what your general rule is with respect to instructions, what it is you generally tell customers;is that correct?

A Yes.

Q And you didn't personally tell Southbridge any of this information, is that correct, you personally?

A Not that I know of. I can't recall telling them.

Q As a matter of fact, Mr. Danziger, is it the better practice to leave this automatic machine on all the time?

A Yes.

Q If a machine is left on all the time, Mr. Danziger, would it be correct to say that it would not be necessary to h[illegible]en the garbage down? Perhaps if I --

A It would be less, much less necessary. You would eliminate most your problem.

Q In other words, as a piece of garbage or trash hits the deflection plate, it will go into the chamber and apparently it will cut or go through the beam, the light beam, which will then activate the ram and it will carry it out into the garbage bag; is that correct?

A Yes.

Q You said earlier that the machine is slow in its operation. Could you give us an estimate, or if you have the exact figure, give that to us also, of the time that it takes for that piston or ram, as we have also called it here, to go back and forward, a complete motion?

A One Cycle?

Q One cycle.

A It's been a long time since I watched it.

Q You have been shown the instruction sheet or the instruction booklet from Auto Pak Company for the Gobbler 16?

A Yes.

Q If you look at the very first page, sir, down towards the bottom where it says "Cycle time (ram)" -- where is that exhibit?

MR. SHANDELL: It is here.

Q Well, correction, it's on the second page. The first page applies to Gobbler 20. The second page applies to Gobbler 16, which is the one that we are dealing with. Does that refresh your recollection, sir, as to the time of the complete cycle of the ram?

A I think this is a little on the fast side.

Q What is that?

A 27 seconds.

Q That is 27 seconds?

A Yes.

Q You think it was even slower than 27 seconds?

A Generally it was slower, yes.

Q Approximately how much slower are you talking about?

A Well, between that and 45 seconds.

Q When we talk about a cycle, are we talking about the ram going from the back position to the forward position and then back again?

A Yes.

Q When the machine begins to operate, and assuming for the moment that all the switches are on but there is no garbage going into it, suddenly something happens to cross the beam, the electric eye beam, and it goes into operation, does it make any noise when that happens?

A Yes.

Q What happens? What is the sound that you hear?

A It's a high pitched whine of the electric motor and the hydraulic pump combined. It's pretty loud.

Q When you say the hydraulic pump, what is that?

A The ram is actuated by a hydraulic cylinder, and the hydraulic fluid is pumped into this cylinder by

a gear pump, which is inherently noisy to begin with.

Q And the combination of all this machinery makes this high pitched sound; is that what you are saying?

A Yes.

Q And there is no mistaking it; is that it?

A Absolutely.

Q Does the control panel have a reverse switch on it?

A Yes.

Q What does that reverse switch do?

A Generally it was a button. It signals the ram to return to the back position, the open position.

Q What would happen if it is moving backwacks and forwards, and then suddenly you decide you don't want it to move backwards and forwards, although there is garbage in there. Could you force it to the back position by pressing that button?

A I believe you can, yes.

Q And would it remain there? Would it remain in that stopped position?

A If you held it that way.

Q You have to keep the button --

A If it was a button, then you would have to hold it. There might have been a constant pressure switch. I don't know about this one.

mbh10 Danziger-cross

Q In looking at those instructions, can you tell us, please?

A I don't know if these-- well, I don't have the instructions, but there were changes made. As I generally recall, it was a button.

Q Let me put it this way: Let's suppose that there is something caught underneath the ram, and you want to try to dislodge it, but the ram itself is holding it and you can't dislodge it. Would you then put the reverse button, press the reverse button into reverse so as to move the ram backwards, and then put the machine into the stop position to keep it that way?

A Yes.

MR. SHANDELL: Objection, if your Honor please.

Q And then, sir --

THE COURT: Just a moment.

MR. IVONE: I am sorry.

THE COURT: No, I will accept this.

MR. SHANDELL: All right.

Q When the machine is in the stop position byvirtue of the switch on the control panel, you can reach in and pick up whatever it was that was jamming it; is that correct?

A Yes.

Q With respect to the hopper door itself, there

mbh11 Danziger-cross

were two hasps; is that correct?

A Yes.

Q Those are those big metal things that hook onto eyes?

A Yes.

Q If a customer wanted that hopper door locked, is it correct that a lock could be put on it?

A Yes.

Q In a situation where the machine is being operated by maintenance people or porters who have experience in it, you wouldn't want to put a lock on that; is that correct?

A Correct.

MR. IVONE: That is all I have, your Honor.

THE COURT: Gentlemen?

MR. KOHLER: No questions.

MR. ISAAC: I have questions, your Honor.

b3 CROSS EXAMINATION

BY MR. ISAAC:

Q By the way, Mr. Danziger, sir, this machine called the compactor or the Gobbler 16 was not designed by the customer; is that correct?

A Correct.

Q Southbridge didn't offer any plans as to how this machine is to be designed; is that correct?

A I don't think so. I don't know.

Q This was manufactured and designed by a company called Auto Pak; is that right?

A Yes.

Q And Auto Pak had a contract or some kind of an arrangement with you representing Universal Thermal to do the particular installation, correct?

A Yes.

Q And I take it, Mr. Danziger -- and correct me if I am wrong, please -- that Universal installed these compactors for various purchasers who may have purchased this unit from the Auto Pak people; is that right?

A Yes.

Q And you were not engaged to do this job specifically for the Southbridge Towers and their particular complex, but for a variety of purchasers, correct?

A Yes.

Q Do you have any general recollection as you sit here now, sir, as to approximately how many of these compactors you installed in 1971 or 1970, a general, rough estimate, if you can help us?

A I would say possibly 50 in '70. Could I ask if that was the year this was done? This was done in '70?

Q Yes, November, 1970, this was installed.

A Probably '50, maybe about '50 or so, '60.

Q And that was for customers throughout the state; is that right?

A Throughout the city.

Q Throughout the city, so we can limit the particular installation process to houses or buildings in the City of New York; is that right?

A Yes.

Q And did you have a crew or more than one crew to do the actual installation?

A Yes.

Q How many men composed a crew for the Gobbler 16, for example?

A It depends what phase the installation we were doing. It was generally between two and three men.

Q I am talking about an installation similar to what was done at Southbridge Towers.

A I wouldn't keep three men there all the time.

Q I see. The machine as manufactured did not come with a lock on the hopper door, did it?

A No.

Q The machine as installed did not come with a lock on it; is that correct?

A Correct.

mbh14 Danziger-cross

Q I take it, Mr. Danziger -- and you correct me if I am wrong -- nobody from Universal went over to somebody from Southbridge and said, "Do you want a lock on that door?" That type of conversation didn't take place, did it?

A No.

Q Was it the particular exhibit which is known -- may I have that particular exhibit, Mr. Shandell?

MR. IVONE: It's at the witness stand.

MR. ISAAC: May I approach the witness, your Honor?

THE COURT: Yes.

THE WITNESS: This (the witness handed a document to Mr. Isaac).

Q I am referring to Plaintiffs' Exhibit 4, which is called Auto Pak Company, Bladensburg, Maryland, the Gobbler That was shown to you before, Mr. Danziger.

A Yes.

Q And I think you testified that that was the particular written instruction that went to Southbridge Towers as part of the written instruction process in the installation of this compactor; is that correct?

A I believe it is. I am not sure if it was this exact--

Q I mean that is a photostatic copy, obviously.

A I mean even there might have been some changes.

mbh15 Danziger-cross

I don't know if -- because from time to time they might have changed it, you know.

Q To the best of your knowledge.

A In general it's the type of thing.

Q You have testified that this is the type of written instruction, if I can use that?

A Yes.

Q That was forwarded to the installation of the machine; is that right?

A Yes.

Q By the way, did you look at that instruction book?

A I just glanced at it.

Q Are you aware, Mr. Danziger, that there is nothing in that instruction book that was given to Southbridge Towers which has anything to say about bridging? Are you aware of that?

A I imagine that would be true.

Q And it would be true no matter what particular model book that was sent to the particular purchaser? As far as you know, there was nothing in the written instruction concerning bridging; is that correct?

A The manufacturer doesn't tell you the faults of the machine.

Q The what?

mbh16 Danziger-cross

A The manufacturer wouldn't print the faults of the machine.

Q If the manufacturer wouldn't print the faults, it wouldn't become known to the purchaser who paid the money for it, would it?

A Unless it was explained to him.

Q Let's talk about the writing and then we will talk about oral instructions. In the writing there was nothing to indicate to a purchaser that there would be any problem with bridging; is that right, in the written instructions?

A I imagine you read it. I didn't.

Q All right. Did you ever see any written instruction about bridging given to a customer?

A No.

Q Who purchased one?

A No.

Q Did you see any written instruction about bridging in this particular installation in connection with the Southbridge Towers job?

A No.

Q With respect to oral instructions, that is, general conversation that your men may have had with somebody at Southbridge, you have no knowledge as to whether

mbh17 Danziger-cross

or not there was any instruction given to Southbridge about bridging, is that correct, and you so testified?

A I don't know, yes.

Q Was this a one-shot type of instruction as opposed to a program? That is, one instruction time rather than a program of instruction over a period of time? Does my question make sense to you?

A I imagine there were questions during the -- there was a considerable period when we were making this installation of the whole project, so there might have been questions during the whole time.

Q I am talking about Universal's instructions. You said there were oral instructions given to Southbridge, correct?

A Yes.

Q Was this an instruction on a one-shot basis, one time, or was it a series or program of instructions that Universal had set up?

A It wasn't a program.

Q It was one, once?

A I am sure there were instructions given at other times other than this one time, because we were there quite a while, and people do have questions.

Q Do you happen to have a specific recollection

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of what questions were asked?

A No.

Q Do you have a specific recollection of what answers you gave?

A No.

Q Do you have a specific recollection as to what problems were discussed or were not discussed?

A No.

Q As somebody who was knowledgeable in the field of engineering, and I guess compactors, sir, did you ever run across a problem prior to 1972 where there was a piece of paper or piece of debris or some object that would attach itself or become connected to the electric eye where there was no particular refuse in the bottom of that hopper, where the machine would then continuously move back and forth by reason of the fact that there was a continued interruption of the beam of light? Did you ever run into that problem?

A Yes.

THE COURT: Excuse me, Mr. Isaac. There was no objection, but I am a little puzzled. Do you mean by that, sir, that you are aware of or you knew of situations where there was a blockage by some piece of refuse or garbage which actuated the electric eye and kept the machine running even though nothing could move because of the blockage? Is

mbh19 Danziger-cross

that what you mean?

THE WITNESS: No, there was-- nothing could move--

THE COURT: Maybe everybody else understands what the question and answer just were, but I am frank to say I do not.

MR. ISAAC: May I try to rephrase it, your Honor? It's probably my fault in phraseology of the question.

THE COURT: Would you mind? That would help, I think..

MR. ISAAC: I certainly will, your Honor.

Q Mr. Danziger,we had some testimony yesterday by Mr. Herman, whose testimony is part of the record in this case, and I want you to accept for the purpose of this question that there was some testimony and evidence that a piece of paper or piece of debris could interfere with the electric eye, even though there was no refuse at that particular point.

If that happened, sir, the machine would be activat... wouldn't it?

A Yes.

Q And if there was a piece of refuse or piece of paper or piece of wood or piece of cardboard or anything on that electric eye interfering with the beam, the machine would be activated and continue to move and continue to

operate even though there was nothing to compact; is that right?

A Yes.

Q And one of the ways, sir, to avoid that situation is to turn the machine off during the times of the day; is that right?

A It's a poor way to do it.

MR. SHANDELL: May I have the answer, please?

THE WITNESS: If you turn the machine off, you avoid anything.

6 a.m.

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Q The hours of operation of the machine, when it would be operated, was that something left strictly to the building, the building owner?

A It's his machine.

Q I am talking about normal procedure. Wasn't that something that was normally left to the building owner to determine what period or periods during the day he would operate the machine?

A It is recommended to leave the machine operating.

Q Are you sure of that, Mr. Danziger?

A We always do. I don't know if anybody told these particular people, but it was the general rule that we recommended to the people to leave the machine operating.

Q Well, there has been read to you page 67 of your examination before trial. Would you go to it, sir, page 67.

A Mine goes to 31.

THE COURT: Would you mind if we use this interval to take the morning recess and you can find whatever we need when we resume?

Mrs. Stone and ladies and gentlemen, a ten minute recess.

(Recess taken.)

THE COURT: All right, Mr. Isaac.

gwlt 2 Danziger-cross

BY MR. ISAAC:

Q I believe, Mr. Danziger, I requested that you look at page 67 of your deposition which had been shown to you at least twice so far this morning and almost this afternoon.

Do you have it in front of you, sir?

A I don't have it. I know pretty well what it was.

THE COURT: You can come up here and turn yourself around so both you and he are facing the jury, can't you?

MR. ISAAC: I certainly can, Judge. Thank you very much.

Q Mr. Ivone just read certain questions and answers that you gave back in November of 1974. I think Mr. Shandell referred to the same page, page 67:

"Q Mr. Danziger, did you give any instructions to Southbridge Towers with regard to whether the machine should be turned on or off at various times?

"A Not that I know of.

"Q Do you know if any such instructions were given about that by any of your men to Southbridge Towers?

"A Not that I know of."

Were those your answers to those questions?

A Yes.

Q Were those answers accurate when you gave them?

A Yes.

Q When I just read to you the words "do you know if any such instructions were given about that by any of your men," you understood that to mean men employed by Universal, correct?

A Yes.

Q Now, sir, a few moments ago you acknowledged -- I call it a problem only for the lack of a better word -- the possibility of a piece of debris or paper sticking onto the electric eye or attaching to it, causing a break in the photo-electric cell, causing that machine to keep running and running and running as long as there is this continuous break, correct?

A Yes.

Q And I asked you about any instructions to Southbridge about keeping the machine off at certain times, do you recall my general questions in that area?

A Yes.

Q Now, you personally never told anybody at South-bridge to leave the machine running 24 hours a day, did you?

A No.

Q And you don't have the name of any individual that made that instruction, do you?

A No.

Q And you don't know whether any such instruction was actually given to Southbridge to leave that machine running

24 hours a day, is that correct?

A Correct.

Q I direct your attention, sir, to page 22 of your examination before trial. Would you turn to that.

MR. ISAAC: With the Court's permission, I will follow the directive I had a few minutes ago by standing next to the witness.

THE COURT: Sure.

MR. ISAAC: Thank you very much.

Q Mr. Danziger, back in November of 1974, when you were at this examination before trial, you recall answering all of these questions and answers, correct?

A Yes.

Q And there was a court reporter similar to the gentleman sitting here today?

A Yes.

Q And of course you were under oath as you are today , correct?

A Yes.

Q Do you recall being asked this question and giving this answer, page 22, line 5:

"Q Did Universal Thermal provide Southbridge with any recommended use of the machine, any instructions concerning recommended use of the machine, specifically whether

or not the machine was to be turned off at night and during certain periods of the day?

"A No. The hours were strictly up to the building."

Did you give that answer, sir?

A I imagine I did.

Q Did you give that answer, sir, yes or no?

A I don't know if that was my exact words.

Q Do you dispute what I have just read, sir, at this deposition? Do you now dispute your answer to that question?

A The line is so thin between one thing and the other, it's possible I did say that.

Q I will read the question to you again, sir.

"Q Did Universal Thermal provide Southbridge with any recommended use of the machine, any instructions concerning the recommended use of the machine; specifically whether or not the machine was to be turned off at night and during certain periods of the day?

"A No. The hours were strictly up to the building.

"MR. REGAN: Your Honor, in other words it was anticipated that they would use the machine for certain periods of time."

Do you recall that question, that answer and that statement by your lawyer?

A I don't really recall it.

Q Is this an untrue statement, Mr. Danziger?

A I wouldn't say that.

Q I take it, Mr. Danziger, if it wasn't the truth you would not have said it, would you agree with that? Mr. Danziger, you weren't lying at that examination before trial, were you?

A No. But the difference there is so close to what actually happened, you know, to what I recall happening, that--

Q In any event, sir, the hours were strictly up to the building as to when that machine was to be used or not?

A The hours are up to the building, yes.

Q Is this what we would call, sir, an automatic machine? I am talking about the compactor, of course.

A Well, there is some work that has to be done manually, but for all purposes it is called automatic.

Q I am not talking in the technical field where something may have to be done with a particular tool, but generally to the trade is this considered an automatic machine in contradiction to a manually operated machine?

A Yes.

Q Generally, the instructions that your men would give as installers of this machine, working through Auto Pak, to a purchaser of this machine, you would point out where the switches would be, correct?

A Would you --

Q Would you point out to the owners of the building where the switches are?

A Yes.

Q That would be part of your instructions?

A Yes.

Q Would you tell them about the existence of an electric eye?

A Yes.

Q You would tell them generally how the machine begins to initiate itself, correct?

A Yes.

Q You also point out the fire door or trap door, or whatever you want to call it, that is to be closed or to be opened, is that correct?

A Yes.

Q Generally, you put the machine on? When I say put the machine on, , where the button says "on", snap it, and the apparatus on the wall you pull it down and the machine is then operative, right?

A Yes.

Q And at that particular point, whether it is the porter or handyman or someone else connected with the building, he can stand back and watch the machine operating?

A Yes.

Q He doesn't have to manually do anything to the machine? Does he?

A No.

Q Except if there is a bridging problem, is that correct?

A Yes.

Q Which you are familiar with.

A There are other reasons, too, but that is mainly it.

Q You told us about that. I am not going to go into that about the stick or broom or whatever it is that you would use to hit a particular bridging object to cause it to fall into the hopper so that the machine could begin compacting.

MR. ISAAC: Would your Honor bear with me a few more seconds?

THE COURT: Yes.

(Pause.)

Q In the written instruction sheet that came from Auto Pak that has been marked, I think, as Plaintiff's Exhibit 4 for identification -- by the way, sir, is that exhibit before you?

A Yes.

Q In that particular manual or prototype or facsimile

that was used by the installers -- when I say "used," used in the sense that it was given to the ultimate customer, the purchaser -- you never saw anything in any of those pages which referred to a direction to run the machine all day, did you?

A No.

Q A few other items, Mr. Danziger, and I am going to sit down.

As part of your agreement or contract with Auto Pak -- by the way, I am not sure, was it a written agreement, oral agreement or don't you recall that?

A I don't recall.

Q Whether it was a written agreement or an oral agreement, you were to be paid by Auto Pak for your services, correct?

A Yes.

Q And as part of the agreement, sir, did you also take it upon yourself through the agreement, whether it be oral or in writing, to do or to be available for service on this machine for some period of time following its installation?

A Yes.

Q And do you recall when you were required to make yourself available for service to the Southbridge Towers, if necessary, following the date of installation?

A Can you repeat that?

Q How long a period of time were you obligated to be available for service on this machine?

A I don't know in this particular case. I am not even sure if Southbridge paid us for the service or Auto Pak paid us for the service.

Q Do you have any records that would reflect that?

A Yes.

Q If some arrangement is worked out between yourself and Mr. Shandell concerning some other exhibits --

A Perhaps I can help you. There was a period immediately after the installation that was included in the installation price, but what the period was, I don't recall.

Q That is really the part I am talking about, sir. Then you don't have to bring that other document.

May we agree, sir, that following the installation by you there was a period of time, whatever that be, that you made yourself available for servicing of this machine and made your people available to be called when necessary for any service on this machine, is that right?

A Yes.

Q And that was part of some agreement you had with Auto Pak, is that right?

A Yes.

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Q Do you have any recollection, sir, or reasonable recollection -- we don't want you to guess -- do you have a reasonable recollection as to that period of time following the installation when you would be available?

A No. That varied between contracts. I don't know this one.

Q Don't guess, please. Do you know, Mr. Danziger, the approximate distance from the bottom of the hopper door to the bottom of the hopper where this ram is located? Could you give us the approximate distance?

A I would guess about 14 inches, perhaps a little less.

Q Could it have been 18 to 20 inches?

A It could have been. It's been quite a while since I had anything to do with the machine.

Q We don't want you to guess. If you can't give us a reasonable account, just say "I have no idea, I have no recollection."

Do you have any record of going to the premises of Southbridge Towers after the installation was completed by your men?

A Yes.

Q And again, would that be part of your records someplace in the office?

A Yes.

Q Would you look for that, sir?

A Yes.

MR. ISAAC: Thank you very much, sir. Thank you for your patience, your Honor.

THE COURT: Mr. Regan.

CROSS EXAMINATION

BY MR. REGAN:

Q Mr. Danziger, did Universal Thermal have anything to do with the design of this compactor?

A No.

Q If I am correct, Southbridge Towers bought the compactor from Auto Pak and Universal Thermal's job was to install it, is that right?

A Yes.

Q What generally was the business of Universal Thermal at thattime in 1970?

A Installation of compactors and oil burners, mainly.

Q You gave instructions to the people who had purchased the machine from Auto Pak, is that correct?

A Yes.

Q When I say "you," I mean employees of Universal Thermal.

A Yes.

Q What was the source of that information?

A The information we received from Auto Pak.

Q When you gave written instructions, was that the Auto Pak Service Bulletin that is marked in evidence here?

A Yes, just about.

Q Before you were paid for your work, was your work inspected?

A Yes, I'm quite sure it was. It was a general procedure for the company engaging us to inspect it.

Q Would that be someone from Auto Pak that inspected it?

A Yes.

Q Who was it that paid you? Was that Auto Pak also?

A Yes.

MR. REGAN: That's all. Thank you.

MR. WILENSKY: I have no questions of this witness, your Honor.

THE COURT: Any redirect, Mr. Shandell?

MR. SHANDELL: A couple of questions, your Honor.

REDIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Danziger, you told Mr. Ivone that the better practice with this machine is to leave the automatic machine on all the time, is that right?

A Yes.

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Q And if the machine is left on all the time it eliminates many of the problems in handling and transferring the material into the compacting chamber, is that right?

A Yes.

Q And you are not able to point now to any time when you ever conveyed this information to the owner of this apartment building, is that correct?

A Correct.

Q And you told Mr. Ivone that it wasn't good practice to put one's hand into this machine to reach around for things, is that what you told him?

MR. IVONE: Objection, your Honor. That question wasn't asked.

THE COURT: Just a moment. Rephrase that, please.

Q Did you tell Mr. Ivone it wasn't good practice for somebody to put one's hand into this compactor to -- I don't know what you said -- fish around or reach around for material? Was that the question?

A I don't think that question was asked that way.

MR. IVONE: I object.

THE COURT: He has answered it. I will let it stand.

He just gave it. Do you want it read back?

MR. IVONE: Yes.

(Answer read.)

Q Did you tell Mr. Ivone that it wasn't good practice for somebody to put his hand into this machine while it was operating?

A Yes.

Q For whatever reason, is that right?

A Yes.

Q Is there any warning on that machine that conveys that information?

A I don't think so.

Q Did you ever convey that information to the porters at the Southbridge Towers?

MR. REGAN: I object to that, if the Court please. There is no evidence that he had anything to do with the porters.

THE COURT: I think that's correct. Can you rephrase that, please? In other words, you have got a fair question here, but I don't think the porters is the way to put it.

Q Is there anything in this written brochure that conveys that information, Plaintiff's Exhibit 4?

THE COURT: Can we agree that the report doesn't say any such thing? Let's not waste time on that.

He said he has been asked about it and he hasn't

read it. To save time, wouldn't all counsel agree there is nothing of that nature?

You would all agree in Plaintiff's Exhibit 4 there is nothing about this?

MR. IVONE: I agree.

Q Did you at any time convey a set of instructions to Southbridge Towers about what was to be done if there was a bridging or jamming of the garbage in the container?

A I don't know.

Q You do know, however, thatpeople who operated this machine would devise things like sticks and iron bars for sticking through the iron door to break up bridges, is that correct?

MR. IVONE: I object.

THE COURT: Did you say design sticks and bars? I couldn't hear you, sir.

MR. SHANDELL: I don't know what precise adjective I used.

THE COURT: If you don't remember, I think we had better start again.

Q Are you aware that customers of Auto Pak Gobblers had taken to employing sticks and bars of various kinds to break up bridging by putting them through the hopper door?

A Yes.

MR. SHANDELL: That's all.

MR. IVONE: May I have a short reross, your Honor?

THE COURT: I hope it is short.

MR. IVONE: It is.

RECROSS EXAMINATION

BY MR. IVONE:

Q Mr. Danziger, you told us earlier that it was your general practice, or your organization's, in any event, to recommend to various customers that the machine be left on?

A Yes.

Q And you also told us here that it was up to the customer whether he left it on or not, is that correct?

A Yes.

Q He selected his hours, is that correct?

A Yes.

Q And if a customer wants to keep a machine on one day out of the week, he can do so, isn't that correct?

A Yes.

Q With respect to the ram which may not be actually operating at the moment even though the machine is turned on, if someone puts his hand in and breaks that electric eye beam momentarily, would that automatically start the machine if it is only momentarily?

A There was generally a timer, timing tube, connected

with this and it wouldn't allow the machine to start with just something flying by, a little piece of paper. Something would have to obstruct it for anywhere between two and five seconds--well, three and five seconds, generally a five-second timer, I believe.

Q In looking at the instructions that Mr. Shandell has offered into evidence here, which is Plaintiff's Exhibit 4, if you will turn to page 5, sir, and if you look at the second paragraph --

MR. SHANDELL: Excuse me. Could you show the witness your copy so that I may follow a copy?

MR. IVONE: You want to follow this copy?

MR. SHANDELL: Fine.

Q From page 5 you will see the second paragraph:

"The packing operation is completely automatic and is initiated as soon as enough trash accumulates to block the light beam for five seconds."

Is that in accordance with your recollection, sir?

A Yes.

Q So let's take the theoretical situation that someone puts his arm in quickly to snatch something from the door. It still would require that arm to cross over the beam and remain there for five seconds before that would activate, is that correct?

A Yes.

MR. IVONE: That's all I have, your Honor.

THE COURT: Anything further, gentlemen?

MR. ISAAC: Your Honor, I'm sorry, but I have one or two more questions.

RECROSS EXAMINATION

BY MR. ISAAC:

Q Mr. Danziger, you just told Mr. Ivone it was your general policy to recommend this machine be running all the time but that it was up to the individual owner to make a decision whether he wanted it to be running all the time or not, is that the substance of your answer?

A Yes.

Q LEt's forget about general rules. Let's talk about Southbridge Towers, the buildings that were involved in this particular case.

Again, reading from page 22 of that examination before trial, the question that was asked of you on November 25, 1974:

"Q Did Universal Thermal" --

MR. IVONE: May I interrupt just a moment? I'm sorry to have to get up at this point. He has stated on the examination before trial and almost consistently --

THE COURT: If this is an objection --

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MR. IVONE: I object.

THE COURT: I will sustain it on the theory you have already covered it adequately. There is no sense repeating it.

Thank you, Mr. Danziger, you may be excused.

(Witness excused.)

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MR. SHANDELL: At this time, your Honor, I want to read from the deposition of Milton Clar.

MR. REGAN: Excuse me, your Honor, I have a witness in court who no longer works for Universal and tells me that he has to be at his job at a future time, and I have this witness on Mr. Shandell's request. I ask him to please call a witness rather than just to read an examination.

THE COURT: I would suggest, if there is any witness to call, we can always do depositions.

MR. SHANDELL: Very well, your Honor. So far as I am concerned, I feel that Mr. Danziger has covered the subject thoroughly, and I no longer require this other witness.

THE COURT: In other words, you are wioling to release this witness?

MR. SHANDELL: Yes, your Honor.

THE COURT: Did you hear that, Mr. Regan?

MR. REGAN: Yes, thank you, sir.

MR. WILENSKY: Your Honor, I would like the record to note I object to reading Mr. Clar's deposition. My client was not a party to the action when Mr. Clar was deposed. I am going to object to the reading of Mr. Clar's deposition.

THE COURT: Since I don't know who Clar is, I can't

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be sure of this, but it may have nothing to do with your client in any event, but again, would you might enlightening us, Mr. Shandell? Who is Mr. Clar?

MR. SHANDELL: Mr. Clar was an officer of Auto Pak at the time when the machine in question was designed. He designed it, and at the time that it was sold to the building He is presently a managerial employee of Gulf & Western, Auto Pak Division.

THE COURT: Located what?

MR. SHANDELL: Located in Bethesda, Maryland.

THE COURT: I see. I don't understand your position, Mr. Wilensky, because I don't think this has anything to do with your client at all.

MR. WILENSKY: The only thing is, your Honor, I would like the court and the jury to know that we weren't parties to the action at the time Mr. Clar's testimony was taken.

THE COURT: Again without checking the docket sheet, I wouldn't know, but I will accept your word for it.

MR. WILENSKY: Thank you, your Honor.

THE COURT: Yes, Mr. Isaac?

MR. ISAAC: May it please the Court, at the time that this deposition was taken, which is April of 1974, my client was not a party, nor were we represented at this

mbh3

particular deposition, and I would merely ask the court to instruct the jury that anything in this record cannot bind my client, for whatever that may be.

THE COURT: I would agree with that. It doesn't have anything to do with your client. It is part of the plaintiffs' case as against Auto Pak, and has nothing to do with your client whatsoever.

MR. ISAAC: I will accept that, Judge.

MR. REGAN: Your Honor, could you make the same ruling with regard to Universal?

THE COURT: In regard to Universal, that is also true, gentlemen, beyond a peradventure of a doubt.

Would you like to go ahead?

MR. SHANDELL: Yes, your Honor.

THE COURT: Would you be good enough, Mr. Shandell, to give us the full name of this gentleman? What is his first name, in other words?

MR. SHANDELL: "M I L T O N C L A R, having been first duly sworn by a Commissioner of Deeds of the City of New York, testified as follows:

"Examination by Mr. Shandell:

"Q What is your name and home address?

"A Milton Clar, 9408 Linden Avenue, Bethesda, Maryland.

mbh4

"Q What is your occupation, sir?

"A I work for Gulf and Western as a product development -- in the Product Development Division.

"Q Out of what office do you work?

"A I work out of the Washington, D.C. office.

"Q What's the address?

"A 600 New Hampshire Avenue, N.W., Washington, D.C.

"Q Do you have a title?

"A Title is Product Development Director.

"Q As Product Development Director, what are your duties?

"A The new items that come up for evaluation, I see them in their prototype stages and offer recommendations.

"Q Are these any particular kind of items?

"A They are basically concerned with the solid waste industry.

"Q Do you work for some particular division of Gulf and Western?

"A The Auto Pak Division, which is a division of Flinchbough Products, which is a division of Gulf and Western.

"Q Now, do you have any formal engineering training?

"A No.

"Q Have you graduated from any recognized college or university with any degree?

mbh5

"A No.

"Q Will you tell us, sir, have you graduated from any secondary school?

"A Yes.

"Q What secondary school did you graduate from?

"A Roosevelt High School.

"Q Where is that, please?

"A In Washington, D.C.

"Q When did you graduate, sir?

"A 1937.

"Q Following your graduation from Roosevelt High School in 1937, what did you do?

"A I worked for the Naval gun factory. Went in to work as an apprentice machinist. I served a full apprenticeship there.

"Q How long?

"A I worked there until going into the service, which is in, I guess, '42, I guess.

"Q As an apprentice machinist, what did you do?

"A I learned to operate all types of metalworking machinery.

"Q That would be lathes and grinders, and things like that?

"A Lathes, milling machines, grinders.

mbh6

"Q Then you went into the service, you said?

"A Yes.

"Q What did you do in the service?

"A I was an apprentice seaman.

"Q How long did you spend in the service?

"A I spent six months.

"Q Were you then discharged?

"A Yes.

"Q What kind of discharge did you get?

"A Medical discharge.

"Q What did you do after that?

"A I went back to work for the Naval gun factory.

"Q In what capacity?

"A Well, I had finished my apprenticeship prior, and I was a machinist, so I went back to work as a machinist.

"Q As a machinist, what did you do?

"A I operated lathes, set up planers. Grinders. Vario

"Q How long did you spend at that?

"A Until about 1953.

"Q What did you do then?

"A Then I went to work for Engineering Research Corporation, in Riverdale, Maryland.

"Q What was the business of Engineering Research Corporation?

mbh7

"A They made machine parts. They built flight simulators and that sort of thing.

"Q What did you do for them?

"A I started out as a machinist.

"Q Did there come a time when you got some different job?

"A Yes.

"Q What was that?

"A I became a designer for them. I was taken out of the shop and put into the design group.

"Q At that time, had you received any training in designing things from anybody?

"A Well, the training at that time was only through the engineers that I had been working with.

"Q When you say engineers that you had been working with, to what engineers do you refer?

"A The engineers at Engineering Research who have special job for which I was employed to make the parts for the new items that they came up with.

"Q And you say they taught you something about design?

"A I learned from them, yes.

"Q How long did you hold that job as a machinist at Engineering Research before going into the design

mbh8

department?

"A About a year.

"Q Now, how long did you spend in the design department at Engineering Research?

"A I stayed there until about 1958.

"Q And that would be approximately how many years?

"A About four years.

"Q And in the design department at Engineering Research, what did you do?

"A Well, I designed specifically the area of riveting machines, and I had some new ideas which were patented by Engineering Research.

"Q In riveting machines?

"A In riveting machinery."

Page 10, line 2 --

MR. IVONE: May I suggest, your Honor, since I am going to have to then pick up the pages, perhaps if he reads it entirely -- I know he is not required to, but I might suggest it.

THE COURT: Well, that is up to him. You can then read anything you care to that he leaves out, as you know.

MR. SHANDELL: "Q What did you do after you left Engineering Research?

mbh9

"A I went into business myself. My own business; of designing and constructing hydraulically-operated machinery.

"Q Had you had any formal training in the field of hydraulically-operated machinery?

"A Only what I had gained in my knowledge at Engineering Research.

"Q And in what manner did you gain this knowledge while you were at Engineering Research?

"A In working with other people in the department.

"Q How much of your time at Engineering Research was spent working on hydraulically-operated machinery?

"A That's a little difficult question to answer as to percentage of how much time.

"Q Would you say it was more than half your time?

"A If you are relating the time with hydraulics as related to the riveting machinery, the riveting machinery was hydraulically operated.

Therefore, in one sense you could say it was all the time. It was related to hydraulic machinery, and then -- I don't know.

"Q So you gained your experience in hydraulics out of your work with riveting machinery?

"A Yes.

"Q After you left Engineering Research, did you

mbh10

design anything?

"A Yes.

"Q What was the next thing you designed?

"A I designed for a scrap dealer a piece of machinery that was hydraulically operated, that transferred loads of scrap metal into a shearing machine.

"Q When you say hydraulically operated, what do you mean?

"A Well, the movements were done hydraulically.

"Q By hydraulically, what does that mean?

"A By using hydraulic cylinders to push something which would be powered by a hydraulic pump, which was powered by an electric motor.

"Q What do you mean when you use the word hydraulic?

"A It's oil under pressure that's doing work.

"Q And in the case of your machine that you designed for the scrap dealer, there was an electric motor providing the pressure?

"A Electric motor rotated a hydraulic pump which, in turn, eventually got to the hydraulic cylinder, which pushed this piece of equipment.

"Q Now, did you design anything else after that?

"A Yes. For a cardboard salvage operator.

"Q What did you design for him?

mbh11

"A I designed a feeding mechanism to feed his cardboard baling machinery.

"Q Did you design anything after that?

"A The next step was into the solid waste field.

"Q What is the first thing you did in the solid waste field?

"A My introduction to that was doing some work for Shayne Brothers in Washington, D.C.

"Q At that time, what was the business of Shayne Brothers?

"A They were solid waste haulers.

"Q When you say haulers, what do you mean?

"A A hauler is someone who has trucks, what transfers solid waste from one place to another.

"Q They operated garbage trucks?

"A Trash trucks.

"Q Did they have a business of picking up trash at people's homes and places of business and depositing it someplace else?

"A They served both family, residential, as well as commercial and industrial accounts.

"Q Now, you did something in the way of engineering for the Shayne Brothers?

"A Right.

mbh12

"Q What was that?

"A The first thing that I did for them was, they were having some problems with the hydraulic mechanisms in their trucks, and I reevaluated what had been done previously and put them in working order.

"Q Did you design any new part or mechanism in the process of putting them in working order?

"A Yes. Hydraulically-operated side lifting mechanism for lifting containers on the side of the truck and dumping it into the truck.

"Q And was this a device which picked something up and put it into the truck?

"A Yes.

"Q What's the next thing you designed?

"A I believe the next thing was a front-loaded type of truck, which is a truck that picked up the containers with forks that extended in front of the vehicle; would drive up to a container and lift it over the cab and dump into the opening of the truck body, which was in back of the cab."

Page 14, line 7.

"Q What's the next thing you designed?

"A A side-loading truck that was loaded in residential use, that the waste from the homes was thrown into the side of the truck and it was compacted in the vehicle hydraulically.

mbh13

"Q You say compacted?

"A Yes.

"Q By what means was it compacted?

"A Hydraulic cylinder.

"Q Was there any pressure on the garbage?

"A Yes.

"Q Was this the first time you had designed anything that compacted anything?

"A If you are saying compacted waste, yes; but in riveting machinery we compact rivets to make them into the shape of rivets.

"Q And this was the first time you had ever compacted waste?

"A Yes.

"Q Was this machine designed for Shayne Brothers?

"A Yes.

"Q Was it ever used by anybody else besides Shayne Brothers?

"A The compaction truck, not the front loading truck; is that correct?

"Q Yes. The compaction truck.

"A That particular truck was not used by anybody else. It was merely a prototype.

"Q How many did Shayne Brothers operate?

mbh14

"A They only operated one, and only as a prototype.

"Q Who built it?

"A It was built right on the premises.

"Q By whom?

"A There was a gentleman who did the welding and fabrication on the site.

His last name was Schmidt. I don't remember his first name. He passed on about five or six years ago.

"Q How as the waste compacted?

"A The waste was compacted through a new system of open extrusion method of forcing the waste into an opening which gradually reduced its periphery, which gave resistance. Therefore, it extruded through under a very high density.

"Q Had you ever observed a waste compacting device before?

"A Oh, yes. Sure.

"Q Had you ever observed one which operated by means of hydraulic pressure?

"A Yes.

"Q Were there designs of this nature on the market at that time?

"A Yes.

"Q When are we talking about, timewise?

"A Well, the equipment that Shayne had had in his

mbh15

fleet that I saw when I came upon the scene had been with him for a while.

"Q Did this equipment include compacting equipment?

"A Yes. These were trucks.

"Q Had you observed any other compacting equipment as of this time other than compacting equipment that Shayne had in his fleet?

"A No. That was my introduction to the waste end of it.

"Q Now, when was it that you first designed this new compactor for Shayne?

"A Of the truck that we are talking about, I believe it was probably in about 1954 or 1955.

"Q What was the next thing that you designed after that?

"A The next item, I believe, was what we call a dual pak, which is a compactor for solid waste that was used for commercial and industrial purposes.

"Q What did it consist of?

"A There was a compaction mechanism, and onto this compaction mechanism was a large container which was the size of like a truck body, which was engaged into the compaction mechanism.

"Q For whom did you design this?

"A This was for Shayne Brothers, and we had formed like

mbh16

a little partnership on this unit."

Page 18, line 2:

"Q What did you design after that?

"A It would be the auto pak line, I think, which was a smaller version of the dual pak, but this operated inside apartment buildings and was being chute-fed.

"Q Was this the first time you ever designed a waste compactor that was fed by a chute?

"A Yes.

"Q When did you do this designing work for this auto pak?

"A I would say about 1955 -- possibly '56; something like that.

"Q And for the dual pak?

"A That was just before this.

"Q And when you designed the auto pak, were you working for anybody?

"A I was working as a consultant to Shayne Brothers.

"Q And what was the exact name of the firm? Was this a corporation, a partnership, or what?

"A It was -- I think it was a corporation.

"Q And you were acting as a consultant to that firm when you designed the auto pak; is that right?

"A Yes. But we had like a partnership of any new ideas

mbh17

that I came up with. We agreed both to share it."

Page 19, line 13:

"Q Now, prior to commencing work on the auto pak, had you ever before seen a stationary waste compactor other than the dual pak that you designed?

"A I had seen one near Philadelphia.

"Q Do you know who built that one?

"A I think it was O. Connor or E. Connor. I don't really remember.

"Q Did you watch it in operation?

"A Yes.

"Q You say it was in Philadelphia?

"A In the Philadelphia area.

"Q Do you know where?

"A I don't know where. It was in a shopping center, someplace.

"Q Was this chute-fed, this one?

"A No.

"Q Did you make any notes about your observations when you looked at it?

"A No.

"Q Now, had you ever, prior to starting work on the auto pak, seen a chute-fed waste compactor?

"A No.

mbh18

"Q Had you ever heard of one?

"A No.

"Q So far as you knew when you were designing a chute-fed waste compactor, you were striking out new ground?

"A Yes.

"Q Now, when you designed it, did you build any prototypes or models, or anything like that?

"A Well, the first one built was really a prototype. The background of it was-- I have a friend in Washington, D.C., who owned an apartment building, and he had told me that there was a fire in the trash room that was being chute-fed, and they had handled loose trash in there and there was no damage to the building, but there was smoke that went up to the chute into the various floors.

He was complaining about his problem, and the next day I was thinking about it, and thought I could build a compactor that would handle that same job and get rid of the burning.

"Q And what did you do next?

"A I mentioned this to the Shayne Brothers at the time and thought I would like to build one of these, and because there would be some monies involved, whether they would-- wanted me to go ahead with it.

mbh19

"They said go ahead.

"Q And you built one?

"A Yes.

"Q How did you build it?

"A I don't -- what do you mean, how did I build it?

"Q Did you just go ahead, build one; with some tools and some machines?

"A I designed the machine so it could be chute-fed, and a horizontal ram, and from these plans I had a man, a welder, who cut the pieces, welded them together, built a hydraulic compactor.

"Q What did the hydraulic compactor consist of?

"A The hydraulic cylinder, a power unit which contains a dual control valve, a pump having normal relief valves, and an electric motor and a reservoir, and this powered a hydraulic cylinder which coperated the compactor.

"Q And you made drawings of all this?

"A Yes.

"Q What did you do with the drawings?

"A I kept them on the premises.

"Q Do you know where they are now?

"A These original drawings should be at the Flinch-bough plant in Red Lion, Pennsylvania.

"Q And that's a division of Gulf and Western?

mbh20

"A Yes.

"Q Did the development of this machine require you to decide how much pressure was required to compact the refuse or the waste?

"A Yes.

"Q How did you do that?

"A Through the testing.

"Q What kind of tests did you run?

"A Well, the machine was built. A container that the waste was going to be compacted into was hooked up to it.

"Q What kind of a container was this?

"A This was a steel container, about a one and one-half yard capacity, cubic yard capacity, and it was compacted into this container.

"Q How did it comptact into the contaner?

"A The waste would drop into the compactor charge chamber, and the compaction plate would push it into the container.

As the container was being filled, as more and more waste was being deposited in there, then the pressure would start building up -- the development of having a container of the right contour, so that when it opened, you could really dump the waste that was compacted in there.

You didn't want to compact it too tight, because

mbh21

you couldn't get it out. You had to have a viable ratio.

"Q How did you decide this?

"A Through tests.

"Q What kind of tests were run?

"A We packed that into a container. We tried dumping it. Checked the weights of what went in, so we would get a ratio of approximately four to one from the original density to the compacted waste.

"Q Where did you get the material that you were compacting from?

"A There was plenty available through the Shayne Brothers pickup trucks.

"Q How did you put it into the chamber?

"A The waste was dumped onto the ground and we shoveled it in.

"Q You didn't have a chute working?

"A No.

"Q What were the pressures that you eventually worked out?

"A The pressures worked over in the 12,000 pound ram face pressure.

"Q Now, by 12,000 pound ramface pressure, what do you mean?

"A The surface area which was pressed against the

mbh22

trash is this ramface pressure. It's equal to the force that is exerted by the hydraulic cylinder.

"Q How can you find out that 12,000 pounds was the amount being inserted? How did you measure the percentage, in other words?

"A We had a non-cylinder direct width pressure gauge on the power unit, indicating the hydraulic pressure, so you multiply the hydraulic pressure by the area of the cylinder, and that gives you your operating pressure.

"Q What did the ramface consist of?

"A It was a flat steel plate.

"Q Have any teeth on it, or anything like that?

"A No.

"Q Now, the ram, I take it, moved across in a horizontal direction; across the chamber where the trash was dropped. Is that right?

"A Yes.

"Q At a certain speed?

"A Yes.

"Q Did you design the speed at which it ran?

"A Yes.

"Q How did you do that?

"A I remember at the time that we wanted to achieve about a thirty-second cycle.

mbh23

"Q What do you mean by a cycle?

"A It's a complete movement of the ram from its starting point to fully redirect, to go completely forward again.

"Q Why did you want to achieve a thirty-second cycle?

"A I wanted -- I felt that that speed would get rid of any space in the volumes that was going to be thrown down the chutes.

"Q How did you make that determination?

"A The cube area of the charging chamber.

"Q And the charging chamber is the place where the trash gets dropped?

"A Gets dropped, and knowing the volume of waste that comes down that chute in a day was being measured, I knew what I had to handle.

"Q What volume of waste was it that you figured out was coming down the chutes of that apartment building in a day?

"A I don't remember.

"Q Did you make any records of these calculations at the time?

"A I had some notes there, yes, on the number of drums of waste they had there that they were storing

mbh24

the trash in. They were measured.

"Q Are you saying that you measured these trash containers in the trash room?

"A In the trash room there's some fifty-five-gallon drums, and they were putting the waste in those.

"Q Weren't they burning it?

"A They had a flue-fed incinerator, but they stopped burning because of the fires that they had been having.

I had told the owner of the building, by this time, that I had a unit that would work in there; if he was willing to go along with being a guinea pig in this case, then we could really test it out.

"Q You say you measured the drums that accumulated and determined from that how much waste was coming down the chute in the course of a day?

"A Yes.

"Q And decided on the thirty-second cycle from that?

"A The thirty-second cycle was taking into account the busy time of the day that trash was being depositd down the chutes, like, really, after dinner was usually the time that the trash flow was the heaviest coming down the chutes into the compactor.

"Q How did you determine that?

mbh25

"A By observation.

"Q Did you measure how much trash came down at any particular hour for any particular length of time?

"A For a couple of days, it was measured.

"Q How did you do that?

"A By these drums that were placed there.

"Q How did you do that?

"A His janotorial people collected these drums of waste.

"Q And did what with them?

"A And had them on the side, and then these were counted.

"Q You say you counted them. Were they segregated in any way?

"A Well, there were many fifty-five-gallon drums.

a.m. gwlt 1 "Clar 201

"Q Yes. Who counted them?

"A They counted them and I had counted them, too.

"Q When you counted them, describe what you did.

"A I saw they had, in a day's time, enough that would warrant about three cubic yards of waste compacted at this four-to-one ratio, so I redesigned --

"Q So then are you saying that it was twelve cubic yards of waste before it was compacted?

"A Yes.

"Q And that was a day's supply?

"A That was the day's -- a dailty, or an average daily accumulation, yes.

"Q And did you make any other observations or determinations as to the waste supply coming down the chutes other than to make an observation that there was about twelve cubic yards per day?

"A Well, the only observation was the ratio between the size of the chute and the size of the charging chamber and the ram, in order to give a free flow of waste.

"Q Is it correct that at that time the only thing you knew about the flow of garbage in this apartment building was that it averaged out to something like twelve cubic yards of waste per day?

"A Yes."

gwlt 2

Your Honor, I notice it is about five of one. I am running out of voice and steam. I wonder if it would be an appropriate time to take our luncheon recess?

THE COURT: It is not quite five of. Could you go a few more minutes and we will quite at five of.

MR. SHANDELL: If I could have a glass of water, I could.

THE COURT: You certainly could. Rather than argue about it, we will let you have some water and stop, both.

MR. SHANDELL: Thank you very much. I appreciate it .

THE COURT: Ladies and gentlemen, we will suspend now and resume at 2:10.

(Luncheon recess taken.)

m. gwlt 1 203

AFTERNOON SESSION

2:15 p.m.

(Jury present.)

THE COURT: All right, Mr. Shandell.

MR. SHANDELL: If your Honor please there are witnesses here and with your Honor's permission I would like to read just a couple more questions and answers from the examination before trial of Mr. Clar and then interrupt that to take the testimony of the witnesses and get back to the deposition when the witnesses have gone.

THE COURT: If it is all right with your adversaries, I would agree.

Is that all right, gentlemen?

MR. IVONE: There is no objection, your Honor, except I don't know who these witnesses are. Mr. Shandell has been making a practice of excluding witnesses. Perhaps he can exclude his own witnesses.

MR. SHANDELL: They are not in the room.

THE COURT: Finish up whatever you want to read, Mr. Shandell, and then call your witness.

MR. SHANDELL: Thank you.

Page 51, line 8. I am going to read a couple of questions and answers and put the witness on and then come back to it.

gwlt 2 "Clar

"Q Now, when you designed the Gobbler, did you make some records of your design work and calculations?

"A Yes.

"Q Where are those records now?

"A They should be at Red Lion, Pennsylvania.

"Q Did you run any tests on the Gobbler?

"A Yes."

Page 52, line 6:

"Q Did there come a time when you achieved a design that you regarded as final?

"A Yes.

"Q When was that?

"A I imagine about 1968. Something like that.

"Q In or about 1968, then, had you ever tested a Gobbler in an apartment building prior to that?

"A Yes.

"Q Where?

"A The first Gobbler that was built was put in a building in Silver Spring, Maryland. The name of the building now is Eldorado Towers.

"At the time, it had a different name, and at the moment, I can't think of that name. That was the first machine that was built."

gwlt 3 "Clar

Page 55, line 8:

"Q Now, prior to 1970, had you ever seen a Gobbler 16 in operation in an apartment building?

"A Test machines, yes.

"Q Did you make records of these tests?

"A Yes. We kept records.

"Q Who made these records?

"A I wrote most of the records myself.

"Q Where would these records be today?

"A They should be with the files at Red Lion."

Page 80, line 7:

"Q Did you ever consult a licensed engineer of any kind about the design of your Gobbler prior to offering it for sale?

"A I can't recall anyone, but it seems as though one of the manufacturers, like AMF of this Mele, who had engineers with them -- all the drawings were gone over with them in that sense, but I don't think I can elaborate any further than that.

"Q Were there any writings exchanged between you and any engineer at either of the fabricators about this product?

"A I believe there were some communications with respect to adhering to certain tolerances that were required in the drawings.

"Q Where would this correspondence or communications

gwlt 4 "Clar 106

be today?

"A I don't know. It would, more than likely, be in the same file.

"Q By the way, you have been referring to files located out at the Flinchbough?

"A At Flinchbough Products, at Red Lion. When I say files, we have had file cabinets, but we have also had boxes in which they put items, too."

That is all I want to read at the moment.

(Witness called.)

D O U G L A S F. B A U E R, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Bauer, are you associated with Gulf & Western?

A Yes, I am.

Q In what capacity?

A I am associate counsel.

Q That is a lawyer, sir?

A That's right.

Q Did Gulf & Western receive a subpoena duces tecum calling for the production of certain records of design and testing of the Gobbler-16 compactor?

A Yesterday morning a subpoena was called to my attention which to my knowledge was not seen by anyone at Gulf & Western prior to yesterday morning calling for the production of certain documents at 10 o'clock yesterday morning, which was physically impossible. Today -- or rather, late yesterday afternoon a second subpoena appeared at our office calling for the production of additional documents this morning at 10 o'clock.

Q Have you put in any search for the design and testing records for the Gobbler-16?

A Not only did we look for the documents yesterday and this morning, but as long ago as we knew this case was pending, which was, I believe, at least a year and a half ago, we have been searching for those documents, and there are no such documents, to my knowledge, at Gulf & Western in New York.

Q How about in Red Lion?

A Today we have no authority over Red Lion because we no longer own that company.

THE COURT: What's the name of that company, Mr. Bauer?

THE WITNESS: That would be the Auto Pak Division which had been a division of our Flinchbough Products Company in Red Lion. We sold the Flinchbough Products Company along

gwlt 6 Bauer-direct

with the Auto Pak Division in July, 1974 and thereby lost all control over documents which should be at Red Lion.

THE COURT: What was the acquiring company's name?

THE WITNESS: It was then called Clabir Subsidiary Corporation, which is a subsidiary, I believe, of Clabir Corporation, which I believe is located in Greenwich, Connecticut.

But I believe they have since changed their name to Flinchbough Products Corporation.

Q During the pendency of this action, sir, there was a period of time between July of 1974 when you at Gulf and Western owned the Flinchbough plant and all the material in it?

A That is correct.

Q During the pendency of this action and prior to July of 1974 were you yourself aware of the pendency of this lawsuit?

A Yes, I was.

Q Were you aware of the requests on behalf of myself, on behalf of my client, for the records of design and testing made by Mr. Clar during the time he was working for Auto Pak and before Gulf and Western acquired the Auto Pak material?

A I believe, I vaguely remember that the law firm here in New York, J. Robert Morris, which is defending certain defendants in this action, requested my advice as to how such documents could be located, and I believe I told them that any such documents which may be at Red Lion, Pennsylvania, to my knowledge had never been removed from Red Lion, Pennsylvania, and could only be found there, and I further suggested that they get in touch with the manager of the Flinchbough Products operation in Red Lion and work with him directly, and I believe after that I

heard no more about it.

MR. SHANDELL: I have no further questions.

THE COURT: Does anyone else have any questions?

MR. KOHLER: I have just a few, your Honor.

CROSS EXAMINATION

BY MR. KOHLER:

Q Mr. Bauer, it has been testified today that the Gobbler in this case, the compactor, was acquired by Southbridge Towers in --

MR. SHANDELL: I'm sorry, I sat down saying that I have no further questions of this witness. But it occurred to me that I have and ought to put other questions, and I wonder if I might prevail on your Honor's indulgence to resume the examination of this witness.

MR. KOHLER: I have no objection, your Honor.

THE COURT: Very good.

MR. SHANDELL: Thank you.

DIRECT EXAMINATION CONTINUED

BY MR. SHANDELL:

Q As counsel to Gulf and Western, sir, are you familiar with the acquisition by Gulf and Western of the Auto Pak Company?

A I have heard of the transaction. It occurred while I was with the company. I did not personally work

on it.

Q Do you know when it occurred?

A Yes, I believe the purchase was consummated July 1, 1971.

Q Is this a copy of the purchase agreement?

A Well, this file contains a number of things which I am not familiar with, but it also contains an agreement dated July 1, 1971, which appears to me to be the agreement which I have seen and which I have been told is the purchase agreement.

Q Would you take out the part you say is the purchase agreement?

A Beginning here, and continuing for 26 pages to that point (demonstrating), and probably these things which follow it in the file are the exhibits which are referred to in it.

MR. SHANDELL: I offer these in evidence, these 26 pages, which are the purchase agreement.

THE COURT: You certainly are not interested in proving the details of the agreement, are you?

MR. SHANDELL: No, your Honor, I am not at all.

THE COURT: Then I don't understand why we are burdening the record. All you really want to show, I suppose, is that on July 1st or thereabouts of 1971 Gulf and Western

acquired Auto Pak.

MR. SHANDELL: And the details of the acquisition would bear upon Gulf and Western's liability for what occurred to Mr. Rizette?

THE COURT: I don't quite follow that. That is not my point. My point is, you do not wish to burden the record with a lawyer's document or documents having to do with the acquisition of the company, do you?

MR. SHANDELL: Not necessarily, your Honor, but I have to prove up Gulf and Western's liability.

THE COURT: Again, I don't want to argue about that, Mr. Shandell. I am simply bearing done on what I conceive might be an unnecessary surplusage of prolix material which does not help prove anything you want to prove. If you don't accept that, I won't press the point.

MR. SHANDELL: If your Honor please, the only thing the purchase agreement bears on is the question of the relationship between Gulf and Western and Auto Pak, and whether under the law Gulf and Western is liable for the torts of Auto Pak.

THE COURT: Mr. Shandell, wouldn't you agree with me as a lawyer that this document won't prove that at all.

MR. SHANDELL: I most respectfully disagree.

Q Is there any contest, gentlemen, in respect to the apparent that on or about July 1, 1971, Gulf & Western acquired Auto Pak Company, or whatever its name is? Is there any question about that?

MR. IVONE: In behalf of Auto Pak I do not contest it, your Honor.

THE COURT: You want this jury to read 26 pages of a legal contract? You don't seriously mean that.

MR. SHANDELL: I don't, your Honor. I didn't hear anybody from Gulf & Western say anything.

MR. KOHLER: Gulf & Western concedes they acquired Auto Pak in July, 1971.

THE COURT: I didn't think there was any question. Now, does that cover it to your satisfaction, Mr. Shandell? Or do you still want to offer this document?

MR. SHANDELL: I am still nervous about it.

THE COURT: I am not asking you about being nervous. Don't you see the serious point I am making?

MR. SHANDELL: I see your Honor's point and it's a very good one, but there are questions of derivative liability here that ought to be buttressed by the record.

THE COURT: Do you want to offer this agreement in evidence notwithstanding the concession I extracted for you. Then I suggest you offer it in evidence.

MR. SHANDELL: I will accept your Honor's suggestion. I have no further questions of this witness.

THE COURT: Do any of you have any questions of Mr. Bauer? I think you do, Mr. Kohler.

MR. KOHLER: No, anything I wanted of Mr. Bauer has been gone into.

(Witness excused.)

MR. KOHLER: I would like a concession from Mr. Shandell that the Auto Pak Company in Red Lion, Pennsylvania had made records available tohim for inspection and to offer Mr. Elliott in Red Lion, Pennsylvania, for examination, and that Mr. Shandell did not show up to conduct that examination and to look at the records that were there. Will Mr. Shandell concede that?

MR. SHANDELL: No, I will not concede that.

MR. KOHLER: Will Mr. Shandell concede that he did not show up in Pennsylvania when he was supposed to.

MR. SHANDELL: What happened, my car broke down and by the time I arrived everybody had left. There are no records in Red Lion, Pennsylvania, as has been indicated many times.

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THE COURT: I don't know about the latter, but he doesn't want to enter into such a stipulation. He doesn't have to if he doesn't want to.

Did we understand correctly, Mr. Shindell, there is another witness you want to call now?

MR. SHINDELL: I have another witness I want to call, but before that I want to clean up this other business we were discussing by reading from written interrogatories submitted to Gulf & Western.

THE COURT: All right.

MR. SHINDELL: May Ihave a moment. I have the answers, but I am looking for the questions.

THE COURT: Well, if it is of any help to you, are you talking about your set of interrogatories addressed to Auto Pak Company, Division of Gulf & Western?

MR. SHINDELL: I believe that may be the interrogatories. I am looking for interrogatory 13.

THE COURT: Well, take a look at what the clerk and I are handing you, sir. Does that help you?

MR. SHINDELL: Yes.

Q Number 13, if I might read it, if your Honor please:

"Set forth whether testing records were maintained, and, if so, by whom, indicating where these records are at the present time."

And from the answer of the defendant Gulf & Western Manufacturing, Pennsylvania Systems Inc., on behalf

of its Flinchbough Products Division, answer to question 13 is:

"Pursuant to agreement with Auto Pak Company all records pertaining to the development of the machine were to be sent to this defendant's plant at Red Lion, Pennsylvania. A search for such records has not discovered them, nor could this corporation determine whether all records had been sent to it."

That answer is dated June 31, 1974.

MR. KOHLER: We have plans and drawings which we can offer to the plaintiff. Do you want to see these now?

MR. SHANDELL: These are just blueprints. Where are the development and testing records?

MR. KOHLER: You have the answer there; they can't be located.

THE COURT: Apparently he doesn't want those, Mr. Kohler.

Just so we don't lose the courtrecord here, I might suggest if you are through with what I just loaned you, you hand it back.

Now, do you have another witness?

MR. SHANDELL: Yes, thereis a witness in the witness room.

THE COURT: His name?

MR. SHANDELL: Mr. Melendez.

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J U L I O M E L E N D E Z, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Melendez, prior to July of 1972, were you employed at the Southbridge Towers here in lower Manhattan?

A Yes, I was.

Q In what capacity?

A I was a porter.

Q And as a porter, what were your duties?

A I was in charge of eight floors. I had to clean the back stairs, front landing and the hallways and also I had to do the windows from eight floors down. There was no safety on it because I had to stand with one leg on the ledge outside and one on the other.

MR. ISAAC: I ask that be stricken.

THE COURT: Yes.

We are not talking about windows or safety equipment here, Mr. Shandell. Perhaps you can help the witness stick to what we have to do with here.

Q Did you have anything to do with the compacting machine?

A Yes.

Q Will you describe the compacting machine?

A The compacting machine has a cylinder and a front door but that door was always open until we were working, and we were instructed, you know, to use a stick when the garbage got stuck to help it down.

Q Did this compacting machine compact garbage in some kind of a cylinder with a ram in it?

A Yes.

Q Did that machine run 24 hours a day?

A Yes.

Q Did you have certain hours when it was in operation, when you attended it?

MR. IVONE: Objection, your Honor.

THE COURT: Yes. You have already asked one question and gotten an answer. I don't think you can go around and try to repudiate your own witness.

Q Were you required to attend to the machine when it was running?

A Yes, sir.

Q And how did you do that?

A We had to stand in front of the machine and help with the stick because it doesn't compact the garbage right, pu know.

Q How did you help with the stick?

A We had to push it down into the cylinder.

Q And what would happen if you didn't push it down into the cylinder?

A It wouldn't compact the garbage right.

Q Was there ever any occasion when the garbage collected above the electric eye?

A Yes.

Q What did you do when that happened?

A When that happened we used to push up with the stick and then down into the cylinder.

Q Were you ever instructed not to do that?

A No.

Q Did you do that during the entire time you attended this machine or was it sometimes?

A All the time.

Q What happened if you didn't do that?

A If you didn't do that it will compact the garbage that was already in the cylinder and then it would stop.

Q What time were you required to get to work in the morning?

A Eight o'clock.

Q When you got to work in the morning was the compactor turned on or turned off?

A It was off.

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MR. IVONE: Objection, your Honor.

THE COURT: No, I will allow that. Did you say that you got to work at 8 o'clock, Mr. Melendez?

THE WITNESS: Yes.

THE COURT: Was it in the course of your duties that you went right down to the compactor at 8 o'clock?

THE WITNESS: Yes.

Q Was the compactor turned on off or --

A It was off.

Q What did you have to do?

A I had to turn it on.

Q Was there garbage around in the chute or in the compactor when you turned it on?

A Yes.

Q When you turned on the compactor, what would happen?

A It would start the cylinder.

Q And then what would have you to do?

A Help it out like usually.

Q And how did you help it out?

A With the stick, pushing down on the garbage.

Q Was the hopper door open?

A Yes.

Q Is that the way you worked until the garbage was disposed of?

A Yes.

Q Is that the way all the porters worked at the compactors until the garbage was disposed of?

MR. IVONE: Objection, your Honor.

THE COURT: Yes. I really think at this stage of the record that objection is well taken. We don't know if he watched other porters or had a chance to.

Q Did you have a chance to watch other porters work occasionally?

A I used to work there with another fellow in that building. There was 27 floors and there was two fellows to work that building.

Q Did he work that the same way?

A Yes.

Q Did you ever have any instructions on how to work this machine?

A Yes, sir.

Q From whom?

A Cristobal.

Q Did Cristobal tell you about the stick?

A Yes.

MR. IVONE: Objection. This is leading, your Honor.

THE COURT: Sustained. I don't think we have to lead Mr. Melendez.

MR. SHANDELL: I didn't hear your Honor's ruling.

THE COURT: I said I see no reason why you have to lead Mr. Melendez. I agree with the objection.

Q Was there some kind of door or plate or something on the top of this machine?

A Yes, there was.

Q Would you describe it?

A It used to work with a spring reaction, but it was a fire door.

Q Could you push it and move it to close it?

A I never tried it but I think you could. You had to put a lot of strength into it.

Q Did anybody ever tell you about closing that fire door to keep garbage from coming down?

MR. IVONE: Objection, your Honor. Leading.

THE COURT: First of all, did you ever have occasion to close that door that you can remember?

THE WITNESS: No, sir.

THE COURT: Now what is your question?

Q Were you ever given any instructions about closing that door?

A No, sir.

MR. WILENSKY: I can't hear the witness, your Honor.

THE COURT: He said "No, sir."

MR. SHANDELL: I have no further questions.

CROSS EXAMINATION

BY MR. IVONE:

Q Are you still employed by Southbridge?

A No, sir.

Q When did you leave?

A They laid me off in '71. I worked there for about six months.

Q You worked there six months and you were in charge of a whole building?

A Well, there were two fellows to a building.

Q Two fellows to each building?

A Yes, to the 27-floor buildings.

Q This is a 27-floor building where you worked?

A Right.

Q And there were two of you all day long?

A Yes, sir.

Q Did they lay you off or did they fire you?

A They laid me off.

Q Did they replace you with someone else?

A I don't know.

Q Did they have two persons to take care of the building when you left?

A Well, yes. There was me and another fellow working

the building.

Q And when you left, do you say there was only one person working a 27-floor building?

A I don't know what they did after that.

Q Mr. Melendez, what is your address?

A 60 Avenue D.

Q Avenue D or B?

A D as in Dick.

Q Is that where you resided at that at that time?

A No, sir.

Q Where do you work now?

A I work at the Ritz Tower Hotel, 57th and Park.

Q At that time where did you live?

A 101 Stanton Street.

Q I think you told us that when you got into the building in the morning you turned it on?

A Yes, sir.

Q The compactor. Did you do that yourself?

A Right.

Q And there was one compactor in this 24 story building?

A Yes, sir.

Q Well, did you have to get the garbage taken care of fairly quickly?

A Yes.

Q How much time didyou have to get this garbage taken care of?

A You see, we used to do it in the morning and in the afternoon.

Q Just a moment. You got there in the morning you say at 8 o'clock?

A Yes.

Q You turned on the machine?

A Right.

Q As soon as you turned the machine on it started working, is that right?

A Right.

Q It started collecting the garbage, is that it?

A Right.

Q That's because there was already garbage in there, is that right, over night?

A There was garbage, right, over night.

Q So you didn't have to open it up to start it, did you; all you had to do is turn on a switch and it would start?

A Right.

Q Now, after starting at 8 o'clock, how much time did you have to clear up all the garbage?

A I don't know how much time it used to take.

Q I didn't ask you how much time it used to take. How much time did you have to clear it up?

A We had to do it quite fast because we had eight floors to do also during the day.

Q How fast did you have to do it? Did you have an hour to do it?

A It would take about two hours, I think.

Q And in two hours you had to clear up all the garbage from 27 floors that had been there over night, is that correct?

A Yes.

Q When was that shut the day before?

A I don't know what time it was shut the day before.

Q What do you mean you don't know?

A I didn't work all the shifts.

Q I know you didn't work the shifts, but you knew how the operation was, did you not?

A Right.

Q What was the operation there?

A They would turn it off as soon as the garbage cleared up.

Q You knew who the porter was that was on the night shift?

A No, sir.

Q You didn't know the porter?

A No, sir.

Q There were two porters at night?

A During the day there were two porters. I don't know abbut the night.

Q You don't know anything about the night?

A No.

Q You don't know when they shut it?

A No.

Q As a matter of fact, someone could have shut it an hour before you came in in the morning and you wouldn't know it, is that right?

A That's right.

Q Was it a lot of garbage when you got there in the morning?

A Well, yes.

Q Was it garbage that had been laying there all night?

A See, like when I left the job --

Q Sir, was it garbage that had been laying there all night?

A I don't know.

Q So you don't know when the porter before you shut it off, is that it?

A That's right.

Q Incidentally, in getting this garbage cleaned in a hurry, were you pushing garbage down from the chute so as to make it come down faster?

A No, we didn't push it down from the chute.

Q Where did you push it down from?

A Inbetween the sliding plate --

Q What sliding plate?

A The one that is above the cylinder.

Q And you would push it there?

A Right.

Q And you would make it go down into the cylinder faster, is that it?

A That's right.

Q And when it went into the cylinder faster you finished the job faster, is that right?

A Yes, sir.

Q And that was the reason why you were pushing it down, is that it?

A Right.

Q So that Cristobal that you just mentioned before, is that Cristobal Sulliverez?

A Yes.

Q And he is the one that gave you instructions, is

that it?

A Yes.

Q Do you know where he is now?

No.

Q Do you have any idea where he is?

A No, sir.

Q When is the last time you saw him?

A When they laid me off.

Q By the way, when you were pushing this garbage into the cylinder to make it work faster, so as to get rid of the garbage faster, you did that with a stick?

A Yes, sir.

Q You didn't put your hand in there, did you?

A No.

Q Why didn't you put your hand in there?

A They gave us a stick to use.

Q I asked you why didn't you put your hand in there.

MR. SHANDELL: Objection.

THE COURT: He has already told us -- you already told us, but didn't you tell us you were instructed to use a stick?

THE WITNESS: That's right.

Q Were you instructed not to use your hand?

A No, sir.

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Q You were instructed to use the stick?

A Yes, sir.

Q Held by your hand, is that it?

A Right.

Q Do you recall if anybody told you not to put your hand in there?

A No.

MR. SHANDELL: Objection.

Q You don't recall?

A In order when clothes --

Q Do you recall?

MR. SHANDELL: May the witness answer the question?

THE COURT: If we can just settle down and get the question repeated, I am sure he will.

Do you want to repeat it, Mr. Ivone?

Q Do you recall if anybody told you not to put your hand in there? Just your hand, I am talking about, not the stick.

MR. SHANDELL: The witness already answered that question.

THE COURT: I believe he has, but I am not sure. No harm will be done.

Q Can you answer the question?

A Repeat it again, please.

Q Do you recall if anybody told you not to put your hand into the machine?

A That's what they gave us a stick for, to use the stick.

Q So as not to put your hand in?

A That's right.

Q May I have this again, please? I know you answered it.

When were you hired there?

A In July.

Q Of what year?

A '71.

Q And when did you leave?

A Six months after.

Q So you left, then, in January of '72?

A Yes, sir.

Q So you weren't there when Mr. Merced had an accident, is that it?

A No.

Q Do you know Mr. Merced?

A Yes, sir.

Q What is your connection with Mr. Merced?

A I know him from church.

Q Is that the Pentecostal church?

A Yes, sir.

Q Do you know him for some time?

A Yes.

Q For how long?

A I would say about six, seven years.

Q By the way, if you were to look down into that machine, is this what you would see? I am showing you a picture that's in evidence, Defendant's Exhibit B. Would you look at that.

A Yes, that's what you would see if you looked down at it.

Q That piston or that ram, that had teeth on it, didn't it?

A Yes.

Q Did I hear you say that while this was operating you also kept the door open?

A Yes.

Q Constantly?

A Yes, sir.

Q You didn't have trouble with things hitting you in the face, did you? Did a bottle hit you in the face?

MR. SHANDELL: May the witness answer the question?

THE COURT: One at a time.

Let's go back. I sustained the objection. One

question at a time, Mr. Ivone.

Q Did a bottle ever hit you in the face when you opened the door?

MR. SHANDELL: Your Honor, I object. There is an unanswered question.

THE COURT: I agree. Let's go back, Mr. Ivone. We have come into this before. Let's deal with it accordingly.

Q When you opened the door and you said -- withdrawn.

You told us earlier that while the machine was operating you always had that door open.

A That's right.

Q Are you talking about the hopper door? What door are you talking about?

A The one in the front there.

Q Did things come out of that while it was operating which would hit you?

A Yes.

Q What did hit you?

A Nothing ever hit me because I used to duck.

Q Because you used to duck?

A That's right.

Q So it wouldn't hit you, is that it?

A That's right.

Q Did a bottle ever come at you?

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A No.

MR. IVONE: That's all I have.

THE COURT: You were not working in the same building, I gather, as Mr. Merced?

THE WITNESS: No, sir.

THE COURT: Do you recall in which building he was working when you were on the job there?

THE WITNESS: He was working in building 6. I was working in building 2.

THE COURT: Was building 6 a high rise or a low rise?

THE WITNESS: It was a low rise.

THE COURT: Thank you.

MR. IVONE: Since your Honor has brought something out, may I go to that a moment?

THE COURT: Yes.

BY MR. IVONE:

Q While you were working there, you say Mr. Merced was working in building 6?

A Yes.

Q And building number 6 also had a compacting machine, is that correct?

A That's right.

Q And for that six months you were working there he

was working in building 6?

A Yes.

Q And he was working the compacting machine also?

A Yes.

Q For that six months.

MR. IVONE: That's all.

THE COURT: Mr, Isaac?

MR. ISAAC: May I have a few questions, sir?

THE COURT: Surely.

CROSS EXAMINATION

BY MR. ISAAC:

Q It may have been asked before, but I was a little confused, Mr. Melendez.

When did you first get the job for Southbridge, the month and the year, if you can help us?

A I got it in July of '71.

Q And when you got the job in July of '71, what address did you begin to perform your work at?

A I was at the building at 77 Fulton, building 2.

Q Did you see Mr. Merced at that time?

A No.

Q Pardon?

A Well, he was working in a different building.

Q But did you see him from time to time?

A Yes.

Q Did you know Mr. Merced in July of 1971?

A Sure.

Q Did you see him in the month of July, 1971?

A Yes.

Q And in August of 1971?

A Right.

Q In September of 1971?

A Yes, sir.

Q In October of 1971?

A Yes, sir.

Q In November of 1971?

A Yes.

Q And December of 1971?

A Yes.

Q And that's approximately the period of time you worked there before you were laid off, right?

A Yes, sir.

Q July, August, September, October, November, December, 1971, right?

A Yes.

Q And how often did you meet and talk to Mr. Merced during that period of time?

A Well, we didn't have time. Just lunch time.

Q Did you see him every day at lunch?

A Yes.

Q During the time you worked there for the six months or so?

A Yes.

Q Mr. Melendez, if I were to tell you that Mr. Merced was in Puerto Rico for that period of time, would that refresh your recollection as to whether you had lunch with him every day?

A Well, we used to have lunch --

Q Would that refresh your recollection if I were to tell you he was in Puerto Rico for that entire period of time? Would that refresh your recollection?

MR. SHANDELL: Could we get answers, your Honor?

THE COURT: I think now we will.

MR. ISAAC: I am sorry.

THE COURT: I think Mr. Melendez may need help here. I am not sure with the interruptions.

Did you understand his question?

THE WITNESS: Yes.

A I recall that he was in Puerto Rico for a while, you see.

THE COURT: For a while, but not the entire time?

THE WITNESS: I don't know how long he was there.

THE COURT: But prior to the time, when you were on the job, you recall he was in Puerto Rico?

THE WITNESS: Yes.

Q You say you started on the job in July of 1971, correct?

A Right. When I started working there, he was there.

Q Who hired you in July of 1971?

A Mr. Nelson.

Q Okay. And in July of 1971 you say Mr. Merced was there?

A Yes.

Q And in August of 1971, was he there?

A No.

Q Pardon?

A No, sir.

Q September of 1971 was he there?

A No, sir.

Q Are you sure about that?

A Yes.

Q You told the jury a few moments ago --

A He was in Puerto Rico for a few months. I don't know what time he was there.

Q When you told the jury a few moments ago you saw him every day for lunch in July, August, September, October,

November and December of 1971, that wasn't accurate, was it?

What was the answer?

A No.

Q Let me go on to something else, Mr. Melendez.

The building you worked in for this six months or so, was that a 27-story building or 7?

A 27.

Q Were you familiar with building 7 at that time over in Beekman Street?

A No, sir.

Q Had you ever been in that building?

A Yes.

Q Is that a 7-story building or a 27-story building?

A I don't recall.

Q Did you ever see the compactor in that room?

A They were all the same.

Q Did you ever see the one in building number 7?

A Yes.

Q Did you?

A I don't recall.

Q Did you ever see Mr. Merced working there in the compactor room in July?

A He was working in building 6.

Q Was he working in the compactor room?

A I would say yes.

Q When you saw him in the compactor room --

MR. SHANDELL: Objection. He never said he saw him in the compactor room.

THE COURT: I think that is correct. Reframe your question, Mr. Isaac.

MR. ISAAC: I will withdraw it.

Q When you got the job in 1971, didyou meet a Mr. Herman?

A Yes.

Q Was he the superintendant of the building?

A Yes, sir.

Q And did he talk to you about your duties and responsibilities?

A Yes.

Q And did he talk to you about what your job would consist of, what you would have to do?

A Yes, sir.

Q And did he talk to you about the use of the compacto

A No, sir.

Q Did Mr. Sulliverez talk to you about a compactor?

A Yes, sir.

Q Did Mr. Sulliverez speak Spanish as well as English, if you know?

A Yes. He speaks Spanish.

Q Did he show you the stick or point out the stick to you?

A Yes.

Q Did he tell you how the machine worked generally?

A Right.

Q Did he show you where the switches were located?

A Right.

Q And there was one on the wall, correct?

A Yes.

Q And he showed you that and then he showed you the on-off button on the machine?

A Right.

Q And he told you what the stick was for, didn't he?

A Right.

Q And he told you when any garbage got stuck to hit it with the stick to make it come down, right?

A Yes.

Q And he gave you all these instructions about how to use the machine?

A Yes, sir.

MR. ISAAC: Thank you.

MR. REGAN: I have no questions.

MR. WILENSKY: No questions.

THE COURT: Any redirect?

MR. SHANDELL: No, your Honor.

THE COURT: Thank you, Mr. Melendez. You may be excused, sir.

(Witness excused.)

THE COURT: Now what is your pleasure or intention at this moment?

MR. SHANDELL: It isn't a great pleasure, but I am afraid I must go back to reading this deposition.

THE COURT: Of Mr. Clar?

MR. SHANDELL: Yes, sir.

THE COURT: All right.

MR. IVONE: May I have just a moment?

(Pause.)

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T4 THE COURT: What page do you desire to start?

MR. SHANDELL: I am trying to find the place.

THE COURT: Well, perhaps while you are looking the jury and I will take the afternoon recess. Ten minutes, Mrs. Stone, and ladies and gentlemen.

(Recess)

THE COURT: All right, sir, may we proceed and at what page?

MR. SHANDELL: The last question at page 28, which was the last I read before I stopped at the end of the morning:

"Q Is it correct that at the time the only thing you knew about throwing garbage in that building is that it averaged out to something like 12 cubic yards of waste per day?

"A Yes.

"Q What was the relationship between your thirty-second cycle that you designed and that volume of waste?

"A Under that thirty-two-second cycle, at the busy time of day, it would still move all the waste out there.

"Q How much waste would the thirty-two-second cycle move in the course of an hour?

"A Probably about twenty cubic yards.

"Q Now, the answer you have just given, how did you

mmh2 "Clar

you derive it?

"A The displacement in the movement of the hydraulic ram displaces X number of cubic feet. I'm figuring it's about one-third of a cubic yard, and it's in an hour, it's 120 cycles at one hundred per cent efficiency.

"Q How do you figure that a ram displaces one-third of a cubic yard?

"A A ram has X number of inches in a movement. At this particular time, I think it was a twenty-four -- twenty-eight-inch stroke. In a twenty-eight-inch stroke, you could equate how much it's going to push.

"Q How do you do that?

"A In a cycle. If you multiply the area of the plate face times its stroke, you will have a volume displacement.

"Q This would assume that the charging chamber would completely be filled, without air spaces?

"A I qualified it before by saying at one hundred per cent efficiency.

"Q Is that the calculations you did at the time

"A I would say that's roughly the calculations, yes, sir.

"Q Did you make any notes or records of these calculations?

"A Oh, yes.

"Q Where would they be now?

mmh3 "Clar

"A I believe they would be at Red Lion.

"Q That's the Flinchbough?

"A Flinchbough plant.

"Q Who would be in charge of these records?

"A Well, you have a head of the company there; General Manager.

"Q What's his name?

"A His name is Anthony Fiorelli; and then the gentleman that's the Manager of Auto Pak Division, his name is Ralph Elliott.

You have an engineer in charge of their drafting department. His name is Michael Lewis. Any one of these people who have charge, or have accessibility to these.

"Q Now, the machine that you tested, where was that one? This auto pak machine that you were testing, that you were describing; that you were trying to figure out about the configuration of the chamber?

"A It was tested where it was built.

"Q Where was that?

"A The Shayne Brothers' property.

"Q Were any records made of the testing?

"A There were records, yes. At the time.

"Q Where would those records be?

"A They should be with the files at Red Lion.

mmh4 "Clar

"Q What was the size of the charging chamber that you decided on?

"A The charging chamber was approximately two foot by two foot by two foot.

"Q After you tested this device, what did you do with it?

"A After this unit was tested, it was put in, on a temporary basis, at this apartment building in the outskirts of Washington.

"Q What was the name of the apartment building? Did it have a name?

"A Yes. The name of the building was the Park Maple.

"Q What was the address?

"A It was 7777 Maple Avenue.

"Q And the city?

"A It's Tacoma Park.

"Q Tacoma Park, Maryland? Virginia? Washington?

"A It's -- I think it's Tacoma Park, Maryland.

It wouldn't be Virginia.

"Q When you installed it there, what was done to install it there?

"A Well, the Shayne Brothers equipment brought the unit out on one of their trucks. It was put on casters, pushed into the room where the incinerator was but had been

mmh5 "Clar

removed; that's also for these drums, and so forth.

The compactor was placed beneath this flue or chute.

"Q All right. Now, was there anything done to cover up the space between the ram and the bottom of the chute?

"A Yes.

"Q What was done?

"A We had a hopper above the charging chamber, which was built up.

"Q What did the hopper consist of?

"A It consisted of four sides of steel which went up to the height of the bottom of the chute.

"Q Was there any opening to the hopper?

"A Yes. It had a door on the side.

"Q Could the door be opened and closed?

"A Yes, it could be opened.

"Q By what means?

"A It had a hinge on it with a twist lock, and you could put a twist latching mechanism. You could put a lock on, too. You could push the latch open, and then you could pull the door open.

"Q How did it swing open and closed?

"A By side. Hinged.

"Q What was the purpose of the door?

mmh6 "Clar

"A In case some big box would be thrown in there, or something that was very big, you could get to it and take b2 the boxes out."

Page 35, line 4:

"Q I suppose, then, there came a time when somebody in the apartment building began to throw waste down the chute?

"A Right.

"Q What happened when they threw the waste down the chute?

"A The photoelectric cell sensed the pressure of the waste and it started the hydraulic cylinder, which forced the waste into the container.

"Q Did that happen continuously as you were watching?

"A It was happening, I'll say, continuously, because at the time they had instructed all the tenants not to throw anything down the trash chute and to leave it on each floor in the trash room, and what had happened, they sent one of the porters -- I think it was a ten-story building -- went to the tenth floor and he commenced to throw the stuff from that floor, and then he went by the series of floors, throwing the waste in.

"Q As the porter was doing this, did the waste build up in the chute in any way?

"A No.

"Q The compactor operated so that as the waste came down, it compacted it and there was no buildup?

"A Right.

"Q As this garbage came down, did you observe what happened with regard to the ram and the charging chamber?

"A I know it was pushing the waste back and forth.

"Q At what rate?

"A At the cycle which -- thirty-second cycle.

"Q How much garbage was it disposing of in the course of an hour?

"A I couldn't tell you.

"Q How much garbage was it disposing of in a cycle?

"A There's too much of a variance to give you a real specific amount.

"Q Tell me, was it a fact that sometimes you would just hit a newspaper, or a small bag--

"A If a small bag was obstructing the eye, then it would initiate a cycle.

"Q What would happen if you had several small bags piled up when the cycle started?

"A As long as the electric eye beam was broken, then the cylinder would recycle the compaction plate.

mmh8 "Clar

"Q How much would drop in at once when the ram opened?

"A Whatever was lying on top of the compaction plate.

"Q Whatever was available to drop in?

"A Everything was available to drop in.

"Q I see; but how much would drop in at once?

"A Everything that was available on top.

"Q Would drop down?

"A Yes.

"Q That's what you say you observed when you saw this machine go?

"A Everything would fall down."

Page 39, line 3:

"Q Do you know to what I refer when I refer to a Gobbler Model number 16 Auto Pak Compactor?

"A I know what a Gobbler is, yes, sir.

"Q What is it?

"A A Gobbler is an extrusion type compactor which is chute-fed and could be hand-fed, too.

"Q Do you know what Model 16 refers to?

"A Yes.

"Q What does that refer to?

"A That is the snout diameter.

"Q What's the snout?

mmh9 "Clar

"A That's the end of te compactor, which the waste is extruded through.

"Q Do you know what serial number 84A0232L would refer to?

"A That 84 is the 84th machine made, and the A stands for AMF, that manufactured that machine for us; and the other number relates to the year and the day of the year. It's a Julian type of calendar system.

"Q Can you identify the year?

"A 'Zero' would be 1970. '232' would be the day of 1970. The day of the year. And the 'L' would mean it would be a left-handed machine."

Page 44, line 4:

"Q Could the machine compact anything?

"A Well, it can't compact anything.

"Q Is there anything that you couldn't put in that charging chamber and have it compacted?

"A Well, some things are not compactible. Normal household waste would be compactible.

A wall switch wouldn't be compactible. Sand is not compactible, but anything of normal household waste is considered compactible.

"Q Did you ever make any tests with reference to the compacting operation of this Gobbler?

mmh10 "Clar

"A Yes.

"Q When were these tests made?

"A These tests lasted over about a two-year period.

"Q What years are we talking about?

"A I can't give you exact years on that, but starting out, I would imagine, around the middle sixties, I would imagine.

"Q When did you design the Gobbler?

"A It started at that time.

"Q Now, at that time, when you were designing the Gobbler, had you see any chute-serviced compactors in operation other than the one at Washington in the apartment building you described earlier?

"A I had been to conventions and seen compactors on display, plenty of them.

"Q Working?

"A Yes.

"Q With chutes feeding them down?

"A No.

"Q Had you ever seen any other chute-fed waste compactor other than the one that you built and installed at Auto Pak?

"A Yes.

"Q Would you t ll us where and when, and under what

mmh11 "Clar
circumstances?"

And there is an objection to that question, and my next question:

"Q Let's deal with the ones you saw at conventions. Were any of these chute-serviced compactors?

A compactor with a machine there ready to compact garbage, and somebody can throw down garbage and it falls down on top of the thing.

"A I saw those at conventions that could be adapted for being chute-fed.

"Q About how many of such things did you see?

"A At what date are you talking about?

"Q Prior to the time when you designed the Gobbler.

"A I saw one machine -- I can't think of the name-- I know it was made by somebody, I think, in the New York area, and it was eventually -- that coopany was eventually-- taken over by Dempster Brothers."

Page 47, line 19:

"Q By the way, these compactors that you saw there, there were other compactors other than the one you described that had a chute; is that right?

"A There were others there like the auto pak.

"Q Did they all have hoppers?

"A They had hoppers.

mmh12 "Clar

"Q Did the have doors, hopper doors?

"A Yes.

"Q Did you observe the design of the hopper doors?

"A Yes.

"Q Do you know what an interlock is, sir?

"A Yes.

"Q Have you ever seen an interlock work on a door to a machine?"

And then Mr. Fried, Mr. Ivone's partner:

"What type of machine are you referring to now?

"Mr. Shandell: Any type of machine.

"Q You may answer the question.

"Mr. Fried: I'll object to it.

"Q You may answer the question.

"Mr. Fried: I'll object to it;instruct him not to answer.

I'd like to know what type interlock?

"Mr. Shandell: Any type of interlock on any kind of door or any kind of machine.

"Mr. Fried: Note my objection.

I'll allow the witness to answer.

"Q You may answer.

"A This is pertaining to the time when the Gobbler was designed? The auto pak was designed, up to date?

mmh13 "Clar

"Q I am asking, have you ever seen an interlock on any kind of door or any kind of machine."

The answer is at 49, line 20.

"A Yes, I've seen an interlock on a door.

"Q Prior to the mid-sixties, when you designed the Gobbler, had you ever seen an interlock in operation?

"A No.

"Q On any kind of machine?

"A I don't believe so.

"Q When you went to these conventions and observed these compactors, did any of those come equipped with interlocks on the hopper doors?

"Mr. Fried: That is prior to 1960?

"Mr. Shandell: Right.

"A No. No one had shown them.

"Q Did youever see any other waste disposal machines other than compactors?

"A I have seen garbage grinders, and I had seen -- this is at any time, sir?

"Q Any time prior to designing this Gobbler.

"A I've seen a Hammermill.

"Q Did those devices have hopper doors?

"Mr. Fried: All of them?

"Q All, or any of them.

mmh14 "Clar

"A Garbage disposals and sinks didn't have anything on them. Didn't have any doors. And the Hammermills, I don't believe they had any doors on them, either.

"Q Did you ever see a scrap grinder?

"A That's a Hammermill.

"Q They didn't have hoppers?

"Mr. Fried: That wasn't your question, Mr. Shandell.

"Q Did they have hoppers?

"A They had hoppers.

"Q With doors?

"A I don't recall any doors on them. No, sir.

"Q Or openings to the hopper?"

MR. IVONE: That was already read before as a prelude to the other witness testifying.

THE COURT: I don't know.

MR. IVONE: I have it marked off. The next question would be at line 15, if he wishes to ask it.

MR. SHANDELL: Page 56, line 19:

"Q Now, did you run any tests as to type of debris or garbage or waste that was put down the chutes and what would happen to the machine?

"A Only to the extent of working with household waste as opposed to commercial waste or industrial waste.

"Q Now, when you say household waste, what do you mean.

mmh15 "Clar

"A Well, that which is generated in an apartment house or a private residence.

"Q Did you yourself, ever make up bundles or packages of waste and throw them down to see how the machine copes with it?

Did you ever do that?

"A I have dropped waste down chutes myself.

"Q What did this waste consist of?

"A Normal household waste.

"Q What do you call normal household waste?

"A This is the -- what the housewife throws away in the bag that she accumulates during the course of the day.

She's done shopping; she has unwrapped her meats, her vegetables, and that sort of thing is put into the bag with her newspapers and whatever she accumulates during the day.

"Q Did you ever try to drop pieces of wood down the chute and see what the machine did?

"A We tried wood, but not from a chute, just to see if we could cut up the wood with the force of the ram. We put in two by fours and four by fours, that sort of thing.

"Q Did the ram cut them up?

mmh16 "Clar

"A Yes.

"Q But you never tried to drop it down the chute?

"A No.

"Q Did you ever try dropping tin cans down the chute to see what happens?

"A No, I didn't.

"Q Did you ever try dropping a bag of bottles down the chute and see what happens?

"A A bag of bottles, no.

p.m.

gwlt 1 "Clar

Page 58, line 21:

"Q When you observed the Gobbler 16 in operation at these various apartment buildings, did you ever observe the workers working with them; apartment building superintendents or portars?

"A Yes.

"Q Did you observe from time to time what they opened the hopper door?

"MR. FRIED: While these machines were in operation?

"Q From the time that they opened the hopper door.

"A I don't believe I ever saw them open the doors more than I've seen them handle the extruded waste in the bags.

"Q Did you ever see what happened when somebody dropped a big carton down the chute?

"A I haven't seen it.

"Q Did you ever try out your machine to see what happened?

"A We tried it out in the plant under our own tests, but without a chute.

"Q What happened?

"A If it was small enough to drop in front of the --

"Q And if it was too big to drop?

"A It would -- whatever was exposed to the ram would be cut off, and it would generally feed down with additional

gwlt 2 "Clar

waste on top of the box.

"Q Did you ever observe in any of your hoppers that items of garbage would not drop down and would block the chute?

"A Only in that first designed machines that we had run tests on.

"Q You never observed this in a Gobbler 16?

"A We used the name Gobbler 16 for all of the machines from the very beginning, and on our test units, the earlier models were still called Gobblers, and with the different countour that we had, the shapes were too widely ratioed and we couldn't get the force to push through. Once that occurred, then it would become natural that something would lay on top.

"Q Did you, in selling these Gobblers, issue any instructions for use in connection with the sale?

"A I never sold the units. I was not in Sales.

"Q Well, Auto Pak Company, of which you were Vice President -- was there any brochure or writing that went along with the Gobbler to any customer who bought one for use?

"A Yes.

"Q Did these include instructions for use?

"MR. FRIED: Just yes or no.

"A Yes.

"Q In what form were those instructions?

g wlt 3 "Clar

"MR. FRIED: You mean whether they were written?

"MR. SHANDELL: All right.

"Q Were they written or oral?

"A They were written.

"Q In what form were these written instructions?

"MR. FRIED: I don't understand your question, Mr. Shandell.

"Q Did you have a brochure, did you have an instruction manual? What did you have?

"MR.FRIED: You just asked him about a brochure in writing. He said that was what was used.

"Q Will you describe the instructions, please?

"MR. FRIED: What the cover looked like, or what? I don't understand your question.

"Q If I were to ask you for it, what would I ask for?

"A I seem to recall an orange binder that had the operating instructions, service manual in it."

MR. SHANDELL: Mr. Ivone, would you concede the orange binder you have before you is a copy of Plaintiff's Exhibit 4?

MR. IVONE: I have already conceded that earlier in the trial.

MR. SHANDELL: All right.

Page 61, line 23:

gwlt 4 "Clar

"Q Would there be any other instructions for the use of these machines other than this orange binder operatin instruction manual that you just referred to?

"A There could have been several after that, but I would not have been involved.

"Q Did you ever write any instructions?

"A I wrote some of the operating instructions.

"Q In what form was your writing?

"A Mine was in the form of handwriting which was given in with information supplied by our service manager, and this was all given to a printer, and they set it up and printed it."

Question at line 21:

"Q Do you remember what the instructions said that you wrote out?

"A I can't detail it.

"Q Were there any instructions attached to the machine?

"A When the machines were sent out, there was a set ofinstructions sent out at the same time to whoever the recipient of the machine was.

"Q Were these printed instructions, on paper?

"A Yes.

"Q And that's the one that you think was in orange binding; or was it?

gwlt 5 "Clar

"A I could have changed colors as they printed them, but I remember, I think, the first ones that came out were orange.

"Q Did your instructions include any instruction as to time in operation?

"A I don't follow you.

"Q Did your instructions instruct the apartment management as to whether or not this machine should be turned off or left off, or turned on, or what have you?"

There is an objection to the form of the question and it is rephrased.

"Q Did your instructions include any instruction as to how much of the day the machine should be left in operation?

"MR. FRIED: In other words, should it be limited from 24-hour operation?

"MR. SHANDELL: Exactly.

"A It wasn't limited in its operation. It was up to the apartment owner.

"Q Did you ever observe, in your observations of this Gobbler, what happened if the machine was turned off and garbage was allowed to stack in the chutes?

"A I haven't seen it, but I've heard it, where people have cut off the machine.

"Q What happened? What did you hear?

"A I've heard when the machine is cut off, the material would pile up. Then, in the morning, they would then turn the machine on, and it would feed everything that's in the hopper and extrude it to the bags; or if Auto Pak, would compact it in the container.

"Q But you never observed it being done; is that right?

"A Right.

"Q Did you ever instruct apartment owners not to do this

"MR. FRIED: Do what?

"Q Where the machine would be turned off and where the garbage would stack up in the chutes.

"A Never told them.

"Q Never told them to do it, or never told them not to do it?

"A Never told them to cut off the machine to allow it to pile up in the machine.

"Q Did you ever tell them not to do that?

"A No."

Page 66, line 3:

"Q Sir, have you had any training in safety engineering?

"A Yes.

"Q Would you describe the training you have had in safety engineering?

gwlt 7 "Clar

"A When I worked at the Naval gun factory, serven an apprenticeship and became a machinist, there was an extra course given at night by the Navy which is Applied Techniques of Safety Engineering, which I took and got a certificate for.

"Q Is that the substance of your training in safety engineering?

"A Yes.

"Q In designing the Gobbler or any of its predecessors, did you consult the safety codes or safety standards?

"A The only area of safety that I actually consulted pertained to the meeting of the electrical code requirements, and there was no established safety standards for solid waste equipment.

"Q Do you mean by your answer to say that the only safety standards or safety code you consulted were those pertaining to the electrical connections?

"A Electrical and hydraulic. Those would be about the only safety codes.

"Q Is that Gobbler a waste disposer?

"A It's a waste compactor and extruder.

Disposer? I wouldn't know how to equate that term, disposer. If you mean does it put it to its final demise, then it would be a disposer.

"Q Did you consult any standards, safety standards

gwlt 8 "Clar

for waste disposers.

"Q Did you consult any standards, safety standarsd for waste disposers?

"A There were none in existence.

"Q Did you consult any safety standards for dangerous machinery?"

MR. IVONE: I believe that was objected to . There is a lot of colloquy there.

THE COURT: Are you on 71 now?

MR. SHANDELL: 67, your Honor.

THE COURT: That goes on for pages. That was never answered. I don't know what you want to get into that for. It resumes over on page 70, I believe.

MR. SHANDELL: If your Honor please, I repeatedly tried to ask the question and Mr. Fried repeatedly interjected and wouldn't let the witness answer.

THE COURT: But there is no answer. That is what I said.

MR. SHANDELL: What happened is the witness refused to answer.

THE COURT: I can't argue with you, Mr. Shandell. I am only pointing out that there is no answer and you had remedies and you know that. So that's what I said. On page 71 after all the objections and what-not, you pick up with

gwlt 9 "Clar

another question. It is on line 17 or 18, page 70.

BY MR. SHANDELL:

"Q Did you consider safety, sir, in connection with your design, in any respect other than the electrical and hydraulic connections?

"A Yes.

"Q What consideration did you give to safety factors?

"A I provided cutoffs for the machines, that when a container would be changed, that the machine could be cut off and --

"Q By what means could the machine be cut off?

"A By two means. One was a junction box, electrical junction box, on the wall, that carried the main power to the equipment; and on the side of the actual machine, and on-off switch.

"Q What was the special relationship with the off-on switch to the hopper door?

'"MR. FRIED: You mean the distance that separates?

"Q The distance.

"A I would say about three feet.

"Q What was the purpose of providing the off-on switch?

"A Mainly for the clean-up of the machine, that a porter wanted to clean his machine, he could cut off the power

"Clar and scrub the machine down.

"Q Any other purpose for the off-on switch?

"A In case there had to be some maintenance to the power unit, you would have a means of cutting off the machine.

"Q What was the purpose of the junction box?

"A The purpose of the junction box also is to cut off the main power to the machine."

MR. SHANDELL: Page 72, line 13:

"Q Do you know what a chute offset is?

"A Yes.

"Q What's a chute offset?

"A That is an agnel in the chute design which -- like an elbow in it. That would be considered an offset.

"Q HAd you ever tested one in your Gobbler in a situation where there was an elbow from the chute leading to the Gobbler?

"A No. Never tested it.

"Q In your testing and observations of the Gobbler, did you ever observe bridging to occur?

"MR. FRIED: May I ask counsel to explain for a mere layman the meaning of the term "bridging"?

"MR. SHANDELL: If the witness understands, he can answer the questions. If he doesn't, I will try to answer your question.

gwlt 11 "Clar

"MR. FRIED: You may answer.

"A I tested for bridging in a prototype shop.

"Q When you say prototype shop, what do you mean?

"A That's where we built the basic machines and tested them.

"Q You didn't test for bridging in the apartment building of the housewives throwing the garbage down?

"A No."

Page 74, line 23:

"Q Did you ever observe bridging difficulties across the gap from the front of the machine to the shock plate?

"A No.

"Q Where were the bridging difficulties that you did observe?

"A Those were from side to side on that, on the dimensions that I mentioned before."

Page 75, line 25:

"Q Have you told us all of the considerations that you gave to safety with regard to your design of the Gobbler?

"A I have to qualify that as to what I can think of at the moment.

"Q Sir, in the course that you took at the Navy place, did that concern itself at all with the guarding of moving machinery?

"A Yes.

"Q And the moving machinery, did that include presses?

"A Yes.

"Q Grinders?

"A Grinders, yes.

"Q Cutting machines of various kinds?

"A Shears, yes. That would be a cutting machine. Yes.

"Q Did you learn principles relating to the guarding of such moving machinery from the extremities of the operator?

"A Yes.

"Q Did you consider any of the principles when you designed your Gobbler compactor?

"A Yes.

"Q What principles did you consider?

"A My consideration was to design a machine so that only authorized personnel could get to the machine, number one; and to have a machine, if someone was not authorized to get into it, that they couldn't get to a part of the machine that could hurt them.

"Q Well, in your study at the Navry school, did that include guarding of moving machinery from injury to authorized persons who were actually operating the machinery?

"A Yes.

"Q Did you take those principles into account in

"Clar

designing the Gobbler machinery?

"A Yes.

"Q What consideration did you give to those principles?

"A The safety switches were in effect on the machine, and also, they had instructions how to turn the machine off when they would operate it.

"Q Have you completed your answer to my question?

"A I believe so.

"If you want to complete the question, maybe there was something hidden in there. Do you think I answered it?

"Q If you think you answered it, then it's been answered.

"A All right.

"Q What form did these instructions take?"

Then there is some colloquy. I believe the question is answered on page 79, line 8:

"A The information about the junction boxes and the cutoff switches were part of the written material.

"Q And this is the same written material to which you have referred earlier?

"A Yes.

"Q Other than furnishing information about junction boxes and the cutoff switch, did that written material contain any other safety instructions; warnings, or directions for

gwlt "Clar 272

safety?

"A I don't know. I don't know of any other.

"Q Did you ever consult a safety engineer about the design of your Gobbler prior to introducing it for sale?

"A No."

Page 82, line 23:

"Q Have you ever heard of the National Sanitation Foundation?

"A Yes.

"Q What is that?

"A That's a company, supposed to be a non-profit organization that has set some standards of safety for kitchen equipment and appliances.

"Q Are you aware of any standards for refuse compactors and compactor systems set by the National Sanitation Foundation?

"A Yes.

"Q When did you first become aware of such standards?

"A I'd say a couple of years ago.

"Q Would brought your attention to that?

" A At that time, being a member of the National Solid Waste Management Association and a division of that called Waste Equipment Manufacturers Institute, that's where the NSF was brought up.

"Q Did you have any part in the preparation of any

safety standards promoted by the National Sanitation Foundation?

"A I was asked to look over those standards that they were drawing up, like a draft, that they wanted my opinion on, as they did with other manufacturers.

"Q Did you notice when you read those standards that they required interlocks on the hopper doors?"

The question is not answered and there is a later question:

"Q Did you notice at that time that these standards required interlocks on the hopper doors?

"A I don't recall that.

"Q Have you ever considered whether or not it was necessary to put interlocks on the hopper doors of your Gobbler compactor?

"A No."

Page 88, line 25:

"Q During your observations of the Model 16 Gobbler, did you ever observe that the free flow of refuse material into the charging chamber was blocked by the lodging of bulky material in the hopper?

"A Only in the test units. Never on the site.

"Q Did you ever observe that a large accumulation of refuse material in the hopper would block the flow of material?

"A Yes.

"Q Under what circumstances would that happen?

"A This was in our tests.

"Q This is on the prototype site?

"A Yes.

"Q Did you ever observe that happen in an apartment building?

"A I can't recall.

"Q Did you ever observe any instructions for the avoidance of this problem?

"A No."

Page 90, line 3:

"Q Did you make any observations about the volume that dropped?

"A The same type of test was done at Eldorado Towers with the volume that they had coming down the chute.

"Q And what did you observe about what would happen when a ram came back in a 16 Gobbler when there was some garbage up above to activate the light?

"A When the light was activated, the cycle would start.

"Q And what happened?

"A The compaction plate would move rearward; the waste would drop down.

"Q Would the compaction chamber fill with waste if

there were enough waste up above?

"A If it were high enough. It would just dispose of the waste of the height of the compaction plate. When that's disposed of, then additional waste would drop down.

"Q What volume of waste would drop at once?

"A Whatever area is provided by the opening below.

"Q By the opening, you mean the opening into the charging chamber?

"A Into the charging chamber.

"Q So, is it your testimony that as you observed the operation of this machine, the charging chamber would fill each time if there was loose waste enough up above to do it?

"A Yes, it would fall into the area.

"Q Would the whole chamber fill with garbage or waste?

"A I could only observe it from the top. I couldn't see what was underneath the surface, but to my best recollection, I would say that it's -- enough of it dropped down to permit whatever was above to feed by itself into the compactor.

"Q At what rate did this occur in your observations of the Gobbler?

"A I can't give you a cube rate.

"Q Did you ever make any tests to determine that in connection with the Gobbler?

"A Only at the Eldorado.

"Q What were the results?

"A The rate of fall -- the machine accommodated the rate of fall.

"Q What rate?

"A Whatever was being thrown down.

"Q Well, suppose you stored it up. How much garbage would it dispose of in the course of an hour?

"A I can't tell you what the rate would be of its falling through, but I can only calculate for you what the displacement at one hundred per cent efficiency would be.

"Q In practice, as it worked, how much garbage would it dispose of an hour; do you know?

"A I don't remember. It's written down.

"Q Are there any records?

"A Yes. There are records of what the displacement is.

"Q In practice?

"A I think the records that are equated in giving the displacement would be at one hundred per cent efficiency, which is listed as part of the specifications of the machine.

"Q Now, you're assuming that every time that the machine worked, the entire charging chamber would be filled to its full cubic capacity; is that right?

"A Right.

"Q Is that the way it worked in practice?

gwlt "Clar 277

"A I would say that you don't have one hundred per cent efficiency on it.

"Q Did you ever make an effort to determine what the percentage of efficiency was?

"MR. FRIED: You mean measurements over a period, or what?

"Q Your observations in testing the machine?

"A No."

Page 94, line 21:

"Q Did you ever take or make observation of the rate per hour that there could be disposal of garbage if the chute remained constantly filled?

"A I could say that at the same place where these records were taken and kept, that they did have it broken down in the morning, how many bags they had filled; and in the evening, the number.

"Q Where are those records today?

"A They are probably with the rest of the stuff."

Page 95, line 14:

"Q What was the compaction ratio in the garbage?

"A The compaction ratio in there was, I would say, perhaps six or eight to one.

"Q Well, can't you tell me exactly?

"A No.

gwlt "Clar 278

"Q Did you ever know?

"A The variance is due to the waste in itself. Waste doesn't follow a set pattern.

"Q Is that all that you can tell me about the rate of waste disposal of the Gobbler?

"A At the moment, I think so."

That's all I have, your Honor. I have now put everybody to sleep.

THE COURT: Mr. Ivone, if I recall correctly, you indicated some desire to read things?

MR. IVONE: Yes, your Honor. Perhaps there are not too many, but there are some.

THE COURT: Do you want to go ahead?

MR. IVONE: Very well.

At page 33, I believe the last question that was read dealt with a hopper door at line 10:

"Q What was the purpose of the door?

"A In case some big box would be thrown in there, or something that was very big, you could get to it and take the boxes out."

The following was not read:

"Q What was the size of the door?

"A I don't recall exactly.

"Q Did you observe this unit in operation?

"A Oh, yes.

"Q Over what period of time?

"A I daily visited the machine for about a month.

"Q How much time did you spend there each day?

"A At first, perhaps a couple of hours, until at the end perhaps fifteen minutes or so, and asking questions to the people.

"Q Was there a means of activating this machine and deactivating it?

"A Yes.

"Q How did you do that?

"A It was automatic in the sense that it was a photo-electric cell setup, which, when the electric beam was broken within the chamber, that it would initiate the action of the ram, and that's how it worked.

"Q I see. Was there any way of turning the whole thing off so that the electric eye wouldn't start it up?

"A There was a junction box on the wall, electrical junction box, which was a cutoff, and there was also, on the machine itself, an on-off switch.

"Q What did the on-off switch operate?

"A It just cuts off the power to the control circuit, so nothing could operate.

"Q This would be what kind of power?

gwlt "Clar 280

"A That would be a low voltage, low amperage; 115 volts.

"Q Electric power?

"A Yes.

"Q Where was the switch located?

"A On the side of the machine.

"Q When you came to observe the operation of this machine, at first, when did you come?

"A I was there the first day it was -- I went there at the installation itself.

"Q Saw when it was installed?

"A Yes."

I am going to page 37. I will read the first couple of lines. At line 7 -- I will read from the top, line 2:

"Q How much would drop in at once when the ram opened?

"A Whatever was lying on top of the compaction plate.

"Q Whatever was available to drop in?

"A Everything was available to drop in.

"Q I see; but how much would drop in at once?

"A Everything that was available on top.

"Q Would drop down?

"A Yes.

"Q That's what you say you observed when you saw this

gwlt "Clar 281

machine go?

"A Everything would fall down.

"Q Did you issue any instructions to anybody at the apartment building with regard to the operation of this machine?

"A Yes.

"Q Was it in writing or orally?

"A These were oral.

"Q What instructions did you issue?

"A I told them that when the machine cut off, to disconnect the container that was on it, push it away, and put on another container. Hook it up. Make sure that when they operate or handle anything, to make sure that the switches are disconnected to the power supply. And if they had anything that they observed that they couldn't handle, to give me a call at home and I'd come over and help them out.

"Q Is that all the instructions you issued?

"A Well, that's quite a while ago. Yes.

"Q Did you issue any instructions about the hours of operation of the machine?

"A No.

"Q Did you ever run any further tests on this machine?

"A Only to the extent of putting on bigger cylinders and checking out how much force would be practical to use.

gwlt "Clar 282

"Q And what were the results of those tests?

"A To leave it the way I had it for that size container and that type machine.

"Q Did you ever design another chute service waste compactor after that?

"A An auxiliary hopper for a dual pak was made so that it could be side-chute floored through a building. That is, having the compactor on the outside of the building and having the waste being handled from the inside of the building, thrown into this door and it would go down this chute into the machine."

At page 40, line 4:

"Q What's a left-handed machine?

"A That means the compactor is put into a room, you might approach it from one side or the other, from the door; and that would be the side that the control panel would be put on, so they had the operating controls available on either side of the machine.

"Q The control panel would refer to what?

"A That would be the on-off switch, the full light, and the control release.

"Q This would be on which side of the machine?

"A That would be the left-hand side; "L".

"Q As you face it with your back to it, or facing it?

gwlt "Clar 283

"A As you face the machine. That is as you face the snout.

"Q Now, do you know by whom this machine was manufactured?

"A Yes. I said it was that "A" stood for AMF.

"Q Was such a machine sold by the Auto Pak Compamy in 1970?

"A Yes.

"Q At that time were you associated with the Auto Pak Company?

"A Yes.

"Q In what capacity?

"A Vice President and designer.

"Q Now, this Model 16 Gobbler, did you design that?

"A I have the patents. The patents are in my name, so I designed it. The basic concept.

"Q WEll, did you help in designing --

"A Not in the basic design, no; but certain appurtenances, since its being first built, and up to this point there might have been changes of certain details that could have been changed.

"Q Who would have done that?

"A I had two design draftsmen working for me. One was named Ronald White and the other was Jim Suter.

"Q This Gobbler machine, was it basically the same kind of operation as the Auto Pak compactor you first described that you tried out in the apartment building in Washington?

"A They both handled waste coming out of the chutes, but they were of little bit different principles in the compaction setup.

"Q Would you describe the difference?

"A In the Gobbler the waste was forced through a reducing transition, that went from a physical eye shape to a round shape, and by this reduction in area, caused the precompaction and then extrusion of waste.

mmh 1

T6 "Q Where would it extrude through?

"A Through the 15-inch diameter snout.

"Q Where was the snout with reference to the charging chamber?

"A The snout was between, on the other end of the precompaction chamber.

"Q When you say the other end, what do you mean?

"A That is the area in which the paper bag or metal drum is put over into which the extruded waste comes out of.

"Q Where does the compaction take place?

"A The compaction takes place in what we call a precompaction chamber.

"Q What is the relation of that precompaction chamber to the charging chamber?

"A The charging chamber holds the waste as it is dropped down the chute that has not been compacted yet and when it is pushed forward in the reducing area is where it is precompacted and they call that area the precompaction chamber.

"Q Are there any other differences between that Gobbler and that first machine you designed?

"A Well, there are several differences.

"Q Will you describe them, please?

"A In order to do extrusion at high pressures, and

mmh2

we use virtually three times as much pressure, and because each stroke of an extrusion type machine engages compaction, whereas in the Auto Pak you don't get any compaction until you start getting a container becoming full, the Gobbler type operation due to the fact that it has this pressure at each stroke, each stroke crushes bottles and cans.

"Q Where does the crushing take place?

"A In the precompaction chamber.

"Q And that would be outside of the charging chamber?

"A Yes.

"Q Does any crushing take place in the charging chamber itself?

"A There would be some residual compaction in there, too, by virtue of the fact that the precompaction chamber has a wall of waste that has been precompacted and anything that would be pushed against this would in some shape and some form have resistance and it would begin somewhere in the charging chamber."

THE COURT: Mr. Ivone, have you got quite a bit more to read?

MR. IVONE: I can't really figure out because it hodge-podge.

THE COURT: If you don't mind, we will suspend. You will be in better order for the morning, so you can

mmh 2a

finish it then.

MR. IVONE: Very well.

THE COURT: Mrs. Stone, ladies and gentlemen, we will suspend now and we will start again tomorrow at10 o'clock. Have a good evening.

(Adjourned to February 5 1975, at 10 A.M.)

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FELIX MERCED and MODESTA MERCED

vs.

AUTO PAK COMPANY, INC., AUTO PAK DIVISION OF FLINCHBOUGH PRODUCTS, DIVISION OF GULF & WESTERN SYSTEMS CO., ALBERT SHAYNE

73 Civ. 1621 HRT

AUTO PAK COMPANY, INC. & ALBERT SHAYNE vs.

SOUTHBRIDGE TOWERS, INC., UNIVERSAL THERMAL INDUSTRIES, INC., CHUTES ASSOCIATES CORP., and CHARTER COMPACTING CORP.

February 5, 1975
10:15 a.m.

(Trial resumed - jury present)

THE COURT: Good morning, Miss Stone, ladies and gentlemen.

Well, on this miserable morning we have all made it with the exception of Mr. Regan, who I might say by prearrangement with everybody, including the Court, is going to be momentarily absent. He will be with us in a few minutes. However, we are permitted to go ahead in his absence.

MR. IVONE: May I continue to read the few pages I had left open?

THE COURT: Yes, sir.

MR. IVONE: Your Honor, would it be appropriate at this time to inform the jury as to the significance of an examination before trial or deposition?

THE COURT: Well, I certainly will do that if you like.

Very simply, ladies and gentlemen, what has been going on here is counsel have been reading from depositions or examinations which are provided to be taken before the trial and under certain circumstances which pertain here these depositions can be read when the witnesses are not available in person. And as you will hear me say again, you are entitled to consider these depositions or the evidence which is contained therein just as if the persons were here in the flesh.

MR. IVONE: Thank you.

MR. ISAAC: If your Honor please, I don't like to be the fly in the ointment, but may I also request that the Court instruct the members of the jury there were certain depositions taken where my client was not represented and not present, and anything that is stated in that deposition is not binding on my client by reason of the fact that we were not there or notified?

THE COURT: What deposition are you now talking about?

MR. ISAAC: I am talking about the deposition that has been read here for the last day or so.

THE COURT: You mean Clar?

MR. ISAAC: Clar.

THE COURT: That has nothing to do with your client. That has to do with the company of which he is vice president. Mr. Clar, as I understand it, is the vice president of Auto Pak.

MR. ISAAC: I don't want the jury to get the impression they can consider any evidence there against my client for any reason whatsoever.

THE COURT: I don't think it is being offered against your client. It is being offered for a different purpose. Go ahead.

MR. IVONE: Page 46. There had been read, your Honor, by Mr. Shandell concerning a certain convention that Mr. Clar attended at which he had seen a particular compacting machine. May I continue reading in that line?

Line 23.

"Q And these conventions you are talking about, what were they conventions of?

"A These conventions were either solid waste management conventions at which manufacturers displayed their goods -- they were localized conventions, that they had

"specifically in New York for this area.

"Q The Solid Waste Management Convention, is that the name? Is there a society or group or organization that held those?

"A At the time, these waste conventions were really a part of the A.P.W.A. -- American Public Works Association.

"Q Conventions?

"A Yes.

"Q Was that an annual convention?

"A Annual, yes.

"Q Was there a section on solid waste disposa

"A Well, they had many pieces of equipment there, and they wouldn't have all types in one area. It was one of wishing a certain spot near the door, or something. It went that way."

Page 47, line 2.

I am sorry. Page 51, line 15. Mr. Shandell read certain portions and I will reread the last couple of questions that he did read.

Line 7.

"Q Now, when you designed the Gobbler, did you make some records of your design work and calculations?

"A Yes.

gw/lf

"Q Where are those records now?

"A They should be at Red Lion, Pennsylvania.

"Q Did you run any tests on the Gobbler?

"A Yes.

"Q Would you describe the tests that were run?

"A The tests involved getting the proper area reduction from the area of the face of the ram and to the area of extrusion diameter.

"By having a very big ratio between the two, you couldn't produce enough power to cause an extrusion, and by the other token, if you had a very, very minimal amount of reduction in this transition area, you couldn't achieve any compaction. Would just push straight through, so designed in this -- from the first Gobbler, so to speak, to its final form, was considerably varied in contour and shape.

"Q With regard to the extrusion part?

"A The whole contour of the machine, of its compaction system."

Going down now to line 21.

"Q Now, that machine, did it have a hopper?

"A Oh, yes.

"Q Did it have a hopper door?

"A Yes.

"Q How did the hopper door operate?

"A It was a hinged door with a -- it had a hasp on it.

"Q Was the purpose of the hopper door in the Gobbler the same as in your other Auto Pak machine?

"A Yes.

"Q Prior to 1970, had you observed any Gobblers in operation in any apartment buildings?

"A Well, the machine I just described was prior to 1970.

"Q That would be at the El Dorado?

"A Yes.

"Q Or its predecessor?

"A Yes.

"Q Had you ever, prior to 1970, observed any other Gobbler in operation than the one you observed at the El Dorado at Silver Spring, Maryland?

"A Yes. We built several different designs.

"Q How many such Gobblers did you observe in operation in apartment buildings?

"A I'd say at least 20.

"Q What is the characteristic identifying that model 16 that might distinguish it from some other Gobbler?

"A The 16 refers to the diameter of the snout, or the size of the diameter of the extruded waste.

"Q Did all of these Gobblers have the same size charging chamber?

"A Number 16?

"Q All the Gobblers.

"A We had two different sizes. One was a 16 and one was a 24.

"Q This was a charging chamber?

"A That's the snout.

"Q Did they all have the same size charging chamber?

"A That would be a little bit bigger. The 24 would be wider than the 16.

"Q How big was that charging chamber on the 16?

"A About 24 inch width, side to side. And on the 24, was about 30 inch.

"Q And how big was the other dimension?

"A I'll have to give you an approximation. The Gobbler-16 opening from the front to the rear was approximately 22 or 24 inches, in that area.

"The 24, approximately 28 to 30 inches, somewhere in that area.

"Q Now, on the Gobbler-16, what was the diameter of the hopper?

"A Side to side, approximately 24 inches.

"Q And front to back?

"A The hopper opening at the very top was approximately five foot long from front to rear, but in that area just below the rear of the machine is a slope, which brought that at the bottom, the dimensions, smaller.

"Q To what size?

"A To the -- in the Gobbler-16 -- approximately 22, 24 inches."

I will read certain portions that Mr. Shandell also read on the same page so we can have continuity.

"Q Now, prior to 1970, had you ever seen a Gobbler-16 in operation in an apartment building?

"A Test machines, yes.

"Q Did you make records of these tests?

"A Yes. We kept records.

"Q Who made these records?

"A I wrote most of the records myself.

"Q Where would these records be today?

"A They should be with the files at Red Lion.

"Q What did these tests consist of?

"A Mostly the relationship of the number of families in a building to the amount of waste generated in a day, so we could get a factor as to what size machine to put in what size building, and what we could expect in the number of bags that would come out, and so forth.

"Q And how many size machines were you selling?

"A We made two sizes.

"Q One was the 16 you have described?

"A Yes.

"Q And the other was the 24?

"A Yes, 24.

"Q What did these tests reveal as to the amount of garbage that was generated in apartment buildings?

"A Well, it revealed that at certain peak times of the day you have peak flows and you have to have a cycle time which would take care of the peak flow, to get rid of it.

"Q Did you decide on a cycle time for the Gobbler-16?

"A Yes.

"Q What was that?

"A That was somewhat less than 30 seconds.

(Mr. Regan enters courtroom)

"Q Do you know how much?

"A I believe a few seconds. Possibly around 27 seconds, I think."

Now at page 72. The line of interrogation Mr. Shandell had been reading had to do with the two switch boxes, the junction box and the switch on the control. Reading now from line 2.

"Q Why did you have these two devices?

"A The electrical code requirements in certain cities required an additional junction box to be put on the wall, although there was one on the side of the machine, and we incorporated it into the design, so it was recommenced for all compactors.

"The junction box was always recommended to the building owner, or whenever the installer -- be put in."

Page 73, line 10.

"Q You didn't test for bridging in the apartment building of the housewives throwing the garbage down?

"A No.

"Q When you say you tested for bridging, what did you do to test for bridging in the prototype shop?

"A This was during the period of the development of the machine from one form and shape to another, in trying to overload the machine to see if it could feed

gw/lf

"everything that was in the hopper of the machine.

"Q What did you do?

"A We had a bridging problem. The basic problem was that the two opposite sides of the compactor walls were tapered from a wider dimension at the top from side to side than at the bottom.

"So, we finally had the straight sides going to the unit, and then we eliminated the feeding problem.

"Q Now, in the Gobbler-16, is there a slope to one of the walls?

"A Yes. The shock plate.

"Q What is a shock plate?

"A A shock plate is when the waste is dropped down the chute, where we can't get the waste to drop directly onto the top of the compactor plate, which is inside the compaction chamber.

"This is a heavy armor plate of steel which the waste hits against, and it slides into the compaction chamber.

"Q And that's on the slope?

"A The shock plate is on the slope.

"Q What is the degree of the slope?

"A It's -- from the horizontal, the including angle on that is about 55 degrees.

"Q And the including angle is which of the

"angles?

"A At the rear of the machine, which generally goes against the wall, that angle coming down into the interior is one part of the angle, and the horizontal plate would be one parallel to the floor."

Page 82, line 2.

"Q Then there came a time that you changed your job; is that correct?

"A Yes.

"Q When was it that you changed your job?

"A In July of '71.

"Q What job change did you make?

"A I went to work for Gulf and Western as a Product Development Director.

"Q Was this at the same time that Gulf and Western took over the manufacture of Auto Pak compactors?

"A Yes.

"Q And Auto Pak, Inc., went out of business?

"A Right.

"Q Have you had anything to do with the development or sale of refuse compactors or compactor systems since then?

"A I have been in contact mostly with the government developments located in Washington and advising

"them of the equipment that might suit their various needs.

"Q What government departments is this?

"A The Navy, Army, Coast Guard."

Page 89, line 20.

"Q When you observed the Model 16 Gobbler, did you make any observations as to the volume of waste that dropped at any one time into the charging chamber?

"A Yes.

"Q What were your observations?

"A I saw the waste drop into the chamber and it was disposed of."

Page 89 -- oh, I read that. I'm sorry.

Page 94, line 13.

"Q Did you ever determine the rate of disposal of a Model 16 Gobbler?

"A I can tell you that we set down records of how much waste a Model 16 had handled in a building in a 24-hour period over a period of a month.

"Q What did that come to?

"A It was counted in a number of bags per day, and I can't recall now."

Page 95, line 6.

"Q Do you have any idea what these figures were?

"A I seem to recall that a building of about 150 apartments was filling about four bags a day.

"Q How many cubic feet would that be?

"A The compacted bag was approximately three -- three and one-half -- cubic feet, and I'd say the bags weighed about 70 pounds each."

That's all I have.

THE COURT: All right, Mr. Shandell.

H E R B E R T A A R O N S O N, called on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHANDELL:

Q Mr. Aaronson, are you a licensed professional engineer?

A Yes, I am.

Q Would you tell the Court and jury about your professional background and training?

A Okay. I received a Bachelor's degree in mechanical engineering from City University, at that time City College. I received a Master's degree in mechanical engineering from Newark College of Engineering, Newark, New Jersey. I have a professional engineering license for the State of New York and one for New Jersey. I have had about

20 odd years of experience in the field and I have been teaching mechanical engineering for the last 10 years.

Q Where do you teach?

A New York Institute of Technology.

Q And what do you teach?

A Practically all courses in the mechanical engineering and quite a number of courses in the industry engineering curriculum that our department administers.

Q What courses are those?

A In the mechanical engineering area, they are statics, dynamics, strength of materials, machine design and thermodynamics, fluid mechanics, heat transfer, practically the entire range.

In industrial, I have taught management courses related to industrial engineering, including safety aspects of plant layout and things of that nature.

Q Would you tell the Court and jury about your practical experience?

A I have worked in the time I was in industry for a number of concerns, mostly in the machine design area. I have done some work in the materials handling area. You want me to be more specific?

Q Yes.

A In machine design area, I was involved with missile

support systems. In the materials handling area, I was involved with mobile booms for sewer cleaning, forklift, equipment related to materials handling.

Q What concerns were you employed by?

A I have been employed by -- my last employment was with American Machine and Foundry and then working my way backwards -- it is a while ago. Let me refer to my notes. That was more than ten years ago. I have been teaching at New York Institute of Technology as associate professor since 1965. So it goes back a little while.

I have done work for Curtis Wright Corporation, for General Electric -- they are not necessarily in the order, but I have worked for them. I have worked for Hydropress Company, Morey Machine Company, Pratt and Whitney, Silent Hoist and Crane Company, Sperry Gyroscope. Both Silent Hoist and Crane Company and Sperry Gyroscope to some extent related to materials handling.

Q You belong to any professional societies?

A Yes, I do.

Q Would you tell us what they are?

A American Society for Mechanical Engineers, American Society for Automo -- I am sorry -- Society for Automotive Engineers and American Society for Safety Engineers.

Q Have you done any consulting work?

A Yes, I have.

Q In what field?

A In mechanical and safety engineering.

Q Did you at the request of Mr. Portnoy, who was then Felix Merced's lawyer, have occasion to examine compactor installations in the unit 7 apartment house complex at the Southbridge Towers complex?

A Yes, I did.

Q And when did you go there?

A The unit was inspected on September 22, 1972.

Q When you got there, what did you observe?

A Well, I saw a -- well, what's generally called a compactor. It is actually a unit that transfers garbage or refuse materials into plastic bags.

Q Have you got some pictures of that unit?

A Yes, I did take some pictures at that time.

Q Do you have them with you?

A Yes, I do.

Q May I see them, please?

A They are stapled together. Eleven pictures.

Q How many did you say?

A Eleven.

Q These were pictures you took of the unit at that time?

A Those were the ones I took personally, yes, sir.

Q And they are fair and accurate representations of the unit that you inspected at that time?

A Yes.

Q Do they contain some letter markings that you put on these pictures?

A Yes, they do.

Q That marks what the various portions of the picture represent, is that right?

A They are what we call "call-outs," pointing to components that are then keyed in the report I rendered.

MR. SHANDELL: I offer the pictures in evidence.

MR. IVONE: I have no objection, your Honor.

MR. KOHLER: No objection, your Honor.

MR. ISAAC: I have no objection to them.

MR. WILENSKY: No objection.

xxx (Plaintiff's Exhibit 7 received in evidence.)

MR. IVONE: How many pictures are there?

MR. SHANDELL: Eleven.

Q Are there eleven?

A Yes. The last picture is number 11.

MR. SHANDELL: May the jury see the pictures, if your Honor please?

THE COURT: Yes.

(Plaintiff's Exhibit 7 handed to jury.)

Q Mr. Aaronson, you stated that this was called a compactor but was designed to transfer material from a chute into a bag?

A That's right.

Q Would you explain that, please?

A Well, compactor or the characteristics of a compactor are that it would reduce the volume of materials to a smaller size, refuse materials in this case. This particular unit does do some reduction in size but basically what it does is take the material that comes into the -- from the chute into the hopper over into the plastic garbage bag. There is really no compaction or baling that one finds as a characteristic of compactors.

Q Why is that?

A It is the way it is designed.

Q It has been testified that this machine pounds garbage against other garbage that's in that plastic bag on the other side of the snout and thereby compacts it. Is that so?

A It will have some small compaction effect but it can't have very large because if it did that the garbage bag itself -- if it is tied at the end -- will burst. They are very thin or relatively thin plastic bags.

Q We are talking about garbage bags. Are those garbage bags that were at the end of this thing?

A Yes, these things here, this black.

Q Is that a closed bag?

A It comes in a continuous tube. In fact, it is even shown over here. And then the operator ties the end to have one end and then when the bag, so to speak, reaches a certain length, they tie the other end and that forms the bag.

Q The tube could extend up to the limit of the length of the room?

A Certainly. There is nothing to stop it from doing that.

Q As you put more garbage in?

A Yes.

Q So it would never offer resistance to the ram so as to compact the garbage, is that what you are saying?

A As long as you have enough of that tube available.

Q Then if you ran out of a tube, if you put pressure on the bag, the bag would burst, is that what you are saying?

A Yes, if the tube is off the things, it just comes out of the end of the snout.

Q So the garbage is what, packed into this plastic thing?

A I would say transferred or placed into this and just a little bit of compaction takes place when the garbage is extruded. It is really an extrusion process. That's what it is. In other words, you are pushing garbage out of a snout. Compacting is the wrong characterization of it.

Q What would happen if a piece of wood or a bottle were to be put into that cylinder where the ram comes in? Would it squash it?

MR. IVONE: Objection. Let's ask Mr. Aaronson to testify. It is leading.

THE COURT: I am not so worried about the leading as I think the question is not very precise.

MR. SHANDELL: I will withdraw the question.

THE COURT: Please phrase it so we are sure exactly what you are talking about.

Q Would material -- what would happen to material placed into the cylinder where the ram goes? What happens to it?

A Well, there is a little chamber that is being vacated and the ram then pushes this material that's in that little chamber into the tube which is called the extrusion tube.

Q If you got a sharp object such as a piece of wood

or a bottle in the plastic bag, what would happen to it?

A If it is near the surface it could tear it. If there are jagged edges. These are very thin bags. I think we have all seen them if you walk around the street.

Q What would happen if it got into the extrusion tube and didn't pass readily through?

A It depends upon the size of the object itself. If it is a large object, garbage might build up behind it until there is enough force available to push it through or if it doesn't push through it could cause a jam or if it breaks up. There are many possibilities.

Q Would there be a tendency to jam the machine in those circumstances?

A In some circumstances it might, in other circumstances it might not. It depends what kind of material we are talking about that gets stuck in there.

Q Suppose it were a large piece of carpet?

A If it would be sort of round, the circumference, it might conceivably offer enough resistance even though there is considerable force involved, but I could envision where that would offer enough resistance to jam the machine, yes.

Q And a piece of wood that stuck in the extrusion tube?

A It depends again on the wood. If it is small in

comparison to the cross section, the garbage might flow around it. If it is large, it could also cause a blockage. You will have to be a little more specific in terms of what gets stuck in there. It could also break up the wood if it is small enough.

Q It might break it up and it might not?

A Yes.

Q How does the garbage get from the chute into the place where the ram hits it?

A Well, the chute is sort of offset to the rear of that hopper and then there is a deflection plate so the garbage comes down through the chute and the deflection plate is like a ramp, sort of like a ramp, and it slides down that ramp and then fills the hopper area or the area above the ramp.

THE COURT: You used the word "ramp" a moment ago, did you not?

THE WITNESS: Ramp, yes. It is the deflection plate.

THE COURT: I am having trouble concerning the difference between your pronunciation. I just want to make sure.

When you were talking about this material coming out of the chute, it hits what is known as the deflection

plate, isn't that so?

THE WITNESS: That's correct.

THE COURT: When you said "ram," you meant deflection plate?

THE WITNESS: One is ramp and one is ram.

THE COURT: I am confusing you, which I don't mean to do. I am trying to make sure.

Would you mind instead of using the word "ramp," r-a-m-p, use plate or deflection plate so we don't miss what you are trying to say?

THE WITNESS: Right. The deflection plate is that angular plate and the ram is the thing that pushes the garbage through the tube.

Q What is the means of transfer from the chute to the place where the ram would contact the garbage?

A Just gravity fed.

Q When you have this deflection plate at an angle, what effect does that have on the gravity effect?

A Well, it reduces the force of gravity because you are now introducing a horizontal component that has to slide down, so the force of gravity isn't as much as its weight, it is less. Then you have on top of that the friction between the plate and the bag or whatever it is, the refuse material.

Q What is the engineering effect from the materials handling point of view of having this setup where the garbage comes down the chute and lands on this deflection plate and slides along this angle to the place where the ram is going to contact it?

A It is not too good a design in that the hopper is -- well, it is a cubical area where garbage piles up. If you have a plate at some angle and some other plate like that, garbage will tend to compress somewhat and pile up and due to the fact that more garbage comes down, well, then the ram retracts, you build almost like a bridge because it is sort of wedged in there and you can very easily get one or two bags falling into the chamber that is supposed -- where the refuse material is supposed to be pushed out and nothing else happens. In other words, most of the stuff stays up.

Q Is there some engineering -- excuse me -- are there engineering devices in the materials handling field which would be designed to avoid problems like that in materials handling?

MR. IVONE: What materials handling, first?

THE COURT: Rephrase that, please. From your own point of view you should rephrase that.

Q In accordance with good and accepted engineering practice, would this system of handling this material from the

chute to the ram area be in accordance with good and accepted engineering practice?

MR. IVONE: Objection, your Honor.

THE COURT: No, I will allow it. If you understand it, what is your opinion?

THE WITNESS: Yes, I can.

MR. IVONE: Before he answers, may I be heard further?

THE COURT: You have been heard. I understand you.

MR. IVONE: Accepted standards of 1970 concerning this type of machine.

Q You understand we are talking about 1970?

A Yes.

MR. IVONE: I object to Mr. Shandell's remarks.

THE COURT: Then I don't understand you. Get to the point. What is it you want?

MR. IVONE: What were the engineering standards for this particular type of machine in 1970?

THE COURT: That is another question. You can ask that yourself. Now let's go back.

In your opinion, sir, can you answer that?

THE WITNESS: Yes.

I think there are methods available if this

tendency occurs to break up the garbage mechanically. Do you want me to go into it?

Q Yes.

A There are various types of devices, like a conveyor type screw that would break up that bridging tendency. Well, it is like a large screw that rotates and then it causes this to break up. Or other mechanical means, rotating bars or vibrating. There are many mechanical devices which can be engineered to break up this tendency mechanically.

THE COURT: Sir, are you telling us that in your opinion this was not a proper design?

THE WITNESS: Yes, in that it had this tendency to clog the garbage, yes.

THE COURT: What was improper, in your opinion, about the design?

THE WITNESS: That the garbage -- there should have been a direct feed so that the garbage would keep on coming down.

THE COURT: In other words, the chute should have come down on the vertical right on top of the hopper?

THE WITNESS: That is another possibility. In other words, if the chute would have been in the center, that would have had the tendency to break up the bridging effect.

That is another possibility. That still would be gravity feed. But you can mechanically dislodge.

THE COURT: I accept you can mechanically do a lot of things. I think the question to you was whether or not in your opinion this design in this respect was not proper.

THE WITNESS: Yes.

THE COURT: I gather in your opinion it was not?

THE WITNESS: That's correct, yes.

Q In the absence of any positive feed or mechanical feed to this cylinder where the ram is, what, in your engineering experience, was required in installations such as this to transfer the garbage into that place?

A When this clogging occurs and, after all, the whole purpose of this installation is to make garbage bags so it can be carted away, they had to do it manually in some way.

Q Was this machine as designed a machine that could automatically compact garbage and transfer it out for carting away?

A Well, they had this particular problem that when bridging occurred, without some manual assistance the garbage just wouldn't come out. So they had to help it along.

Q In connection with a machine that requires manual assistance, are there engineering principles required

by good and accepted engineering practice for safety in the design of such a machine?

A Yes, there are.

Q And what are those principles?

A Well, in this particular instance?

Q No, general principles first and then we will get to this.

MR. IVONE: May we relate back to 1970?

Q We are talking about 1970.

A Yes, certainly.

One thing is to install a device which will prevent operation when -- well, when an operator has to go into the area where movement of components takes place.

Q First let's talk about general principles. Are there general principles?

A Yes.

Q What are the general principles?

A To make it safe.

Q And to make it safe, what does an engineer or designer have to do?

A He has to be aware or be knowledgeable in what the operational characteristics of these are, what an operator has to do.

Q And after he is aware of that, then what must he do?

A He has to insure that operators don't get hurt.

Q In connection with this particular type of device, what would good and accepted engineering practice have required?

A Well, for one thing, that access door should be provided with a mechanism that's called an electromechanical or mechanical interlock.

Q What is an electromechanical or mechanical interlock?

A It is a device which will prevent operation of the machine when the door is opened, for instance.

Q How does that work?

A It is hooked into the electrical system. There are many analogies.

Q Explain the electromechanics of it for a moment.

A It is a switch which is tied into the door and when the door is closed, that switch opens -- I am sorry -- closes the circuit and allowed whatever function is necessary for the operation of that machine.

Q And when the door is open?

A When the door is opened, that switch opens the circuit and precludes operation or precludes, in this case, initiation of a cycle or stops an ongoing cycle or whatever.

In other words, no action takes place.

Q Were such electromechanical interlocks generally available in 1970?

A Yes. That has been known for many years. I don't know when they came in, but certainly way before 1970.

Q Could you give the jury some examples of it that they might be familiar with?

A Yes. Elevators, for instance.

MR. IVONE: Just a moment. Let's find out whether they were in use on this type of machine in 1970, not whether they are in use in elevators.

THE COURT: In other words, you are objecting?

MR. IVONE: I am objecting, yes.

THE COURT: I see no harm in explaining an interlock device generally, which is all I see this question to be.

A Do you want me to explain an interlock?

Q Yes.

A Interlocks in elevators, for instance, self-service elevators, the doors do not open until the elevator is at a particular level. That's an interlock. In other words, the doors will remain closed as long as the elevator is in motion and gets to a certain floor. Or the elevator will not move, will be prevented from moving until the doors

are closed. That's an interlock. We have it in cars. A recent problem was that the seat belts had an interlock. Unless the belts were engaged, the car wouldn't move. That was an interlock. It's been removed since.

Q Were interlocks in general use in 1970 in the use of materials handling machinery with open moving parts?

MR. IVONE: I object.

THE COURT: Sustained. Let's stick to what we have here.

He has already answered that in effect anyhow, Mr. Shandell, by virtue of what he just said.

Q Were there accepted engineering standards in 1970 which required the use of interlocks in waste disposal equipment?

A There were standards available that required interlocks, yes.

Q And were there standards in 1970 in the waste disposal field which required --

MR. IVONE: Which standards are we talking about? I must object to it. What are we talking about here?

THE COURT: I wouldn't know, Mr. Ivone.

MR. IVONE: That is why I am objecting.

THE COURT: Hopefully you will let him finish his question. I don't know what his question is because he hasn't

finished it.

Finish your question, Mr. Shandell.

(Question read)

Q -- other means of protecting the operator of a machine that had moving parts in the waste disposal field?

MR. IVONE: I will object to it.

THE COURT: I will allow it, but I would hope that you will tell us somewhere along the line what standards it is you are talking about. Go ahead.

A Other means of preventing?

Q Yes.

A There was some provision -- if there is an access door on any of these devices -- that that access door be bolted in such a way that an operator couldn't readily open it or it would require special tools to get to the access door.

THE COURT: What standards required this?

Q What standards are you referring to? Are you referring to some specific standard in your answer to that last question?

A Yes.

Q Would you tell us?

A There is a waste disposal standard --

Q When was it adopted?

A That was adopted -- it was adopted by the American

National Standards Institute in 1970, but it is an original Underwriter's Laboratory standard, and that, according to my note here, comes from or at least the adoption by the American National Standards Institute says that it supercedes the one of May of 1966, and it was adopted in 1970, by the American National Standards Institute.

THE COURT: And what is the standard?

Q Read the standard if you have that available in your report.

MR. IVONE: Is it a standard by the American National Standards Institute?

THE WITNESS: Yes. It is ANSI C33.59-1970, which means that's the time it was adopted.

Q Go ahead, read it.

A I have several sections that I have devoted here. Would you like me to read them all?

Q Please.

MR. IVONE: I will object to this.

MR. SHANDELL: That is what Mr. Ivone has been asking for.

THE COURT: I thought, Mr. Aaronson, you were telling us about some standard applicable to doors. Do you have that?

THE WITNESS: They cover access doors, yes. I

25 Q If you got a sharp object such as a piece of wood

just have those sections that relate to access doors.

THE COURT: All right.

MR. IVONE: What kind of a waste disposal unit are we talking about?

MR. SHANDELL: Your Honor, it isn't necessary because the defendant here has designed this machine that's unlike any other machine in the world that he has his own standards.

THE COURT: We will get to it in due course.

Please go ahead and read this, whatever it is you think is applicable to doors.

THE WITNESS: Section 101:

"If the normal operation of a disposer involves accident hazards, suitable protection shall be provided to reduce such hazard to an acceptable degree."

Section 102:

"The details of guards, safety releases, interlocks and so on are not specified but need for such accessories and their adequacies if provided could be determined from a study of the complete disposer, its operating characteristics and the likelihood of accidents resulting from other than gross negligence."

Section 103:

"If the disposer has parts that are liable to

A It depends again on the wood. If it is small in

"cause injury to persons a motor control switch other than a momentary contact switch on the disposer shall have plainly marked off position."

That is one standard.

Then there is a related standard, Guarding of Dangerous Machines, Vats and Pans. That is Industrial Code Rule No. 19, State of New York, Department of Labor, Board of Standards and Appeals, and it is referred to as 12NYCRR 19 as amended effective May 1, 1966.

Now, this standard relates to -- a section in this standard relates to guarding of plastic scrap grinders which is closely related to the type of things that we have.

MR. IVONE: Guarding of what?

THE WITNESS: Plastic scrap grinders.

Q Go ahead.

A "The hopper of every plastic scrap grinder shall be so arranged or extended as to prevent the fingers or hands of the operator from contacting the cutting knives. Any fastener used on the grinding machine shall be machine bolts or screws or the equivalent requiring the use of a tool for removal. Fasteners such as thumb screws or wing nuts which can be removed by hand shall not be used."

This is now item C.

MR. IVONE: Is this a grinding machine he is talking

about now?

THE COURT: I will ask the jury to disregard all this quotation from a standard relating to a plastic grinder machine. I don't think there is any competent evidence that that's what we are talking about here. Otherwise, I will let the answer stand.

A Item C:

"The feed entrance to the scrap grinder shall be --

MR. IVONE: Your Honor just ruled.

THE COURT: I said, Mr. Witness, we don't want to hear about a plastic scrap grinder. We are not dealing with that so far as I know from the evidence in this case so far.

Q Mr. Aaronson, were standards, engineering standards, generally accepted in the industry with regard to a machine that disposed of scrap or garbage and that had moving parts, did those standards require an interlock on the hopper door?

MR. IVONE: Objection, your Honor. This is leading. Why can't we allow the witness to answer the question instead of him suggesting what the answer should be?

THE COURT: I am not so sure about that. I think the question again is unclear.

Mr. Shandell, I will allow you to ask this witness if there is any standard, recognized standard, of a respectable body having to do with interlocks. But why don't you just ask him that?

Q Is there any recognized standard by a respectable body having to do with interlocks?

A Yes.

THE COURT: And was it so in 1970 or before?

THE WITNESS: Well, the ones that I quoted were the ones before 1970. There are some standards that came into the industry after 1970 that had to do with interlocks, I mean acceptable standards.

THE COURT: I think Mr. Shandell will agree he is seeking to get what standards, if any, were in existence in 1970.

MR. SHANDELL: For the moment. May I say we're not necessarily limited to what some industry association wrote down but we're seeking to get generally accepted engineering principles.

THE COURT: You used the word "standard" and I don't mean to quarrel with you. I am trying to help you to clarify the situation which, if I may say so, is less than that so far.

Again, would you put your question as you want it?

I will not intervene to help in any further particulars.

MR. SHANDELL: Thank you.

Q Mr. Aaronson, in accordance with generally accepted engineering principles applicable in 1970, did doors to a machine such as this, that is, a machine that had a ram that moved things in it, to move materials, was such a door required to have an electromechanical interlock that would turn the machine off if the door was opened?

MR. IVONE: May I have the question read back? I missed it somewhere along the line.

THE COURT: I would ask you, Mr. Ivone, to keep your ears open so we don't have these continued interruptions.

I am going to allow the question, but if you want it read back, you will have it read back. You want to move up to this front table so you can hear?

MR. IVONE: I will stay here.

THE COURT: We will read it back.

(Question read)

A Yes.

Q Suppose, sir, that the door to such a machine was not required to be opened except on rare instances when some repair had to be done to the machine. Was there something that was required in accordance with generally accepted engineering principles in such a case?

A Yes.

Q And what was that?

A Well, it should be bolted and in order to remove it you would require special tools to remove it.

Q If the door had to be opened relatively frequently and thus exposing the machine, what was required, if anything, in accordance with generally accepted engineering principles?

A Then you have to have some kind of an interlock device which will stop the ongoing operation of the machine.

Q When you examined this machine, was there something on top of it between the hopper and the chute?

A Yes, there was something on top of it.

Q What was it?

A It is shown in my pictures here. It is a fire damper.

Q What is a fire damper?

A If there is a fire in the unit, in order to prevent it spreading through the chute there is a plate that shuts off -- cuts off the chute from the hopper.

Q How did it work?

A That was activated by a temperature device and springs in that when the temperature got to a certain level bolts -- I don't remember whether they explode or whether they just melt, something just melts, and allows the springs

to have that plate slide and cut off the hopper from the chute itself.

Q Could you please --

THE WITNESS: Do you have a marking device?

Q -- mark the fire damper on the picture that shows it?

A How do you want me to mark it?

Q Circle the thing completely.

A It is this piece here (writing). Do you want me to mark it on the others, too?

Q No. On photo 1 have you marked it?

A Yes.

MR. SHANDELL: May the jury see it, if your Honor please?

THE COURT: Yes.

(Plaintiff's Exhibit 7 handed to jury.)

Q Now, Mr. Aaronson, you discussed the electromechanic interlock. Were there other safety precautions that generally accepted engineering principles required in a machine design such as this that you found absent in this case? Say yes or no.

A Yes.

Q Would you tell the Court and jury about it?

A For instance, there should have been some kind of

a warning which would tell the operator to be careful when he goes into the access door.

Q Go ahead. Anything else?

A These warnings should also be in the manual if there is a manual on this thing.

Q And that was required by generally accepted engineering principles back in 1970?

A Yes, it's been for many years warnings are put in as a matter of general principle, yes, if they are dangerous situations.

MR. SHANDELL: I have no further questions.

THE COURT: Mr. Ivone.

CROSS EXAMINATION

BY MR. IVONE:

Q By the way, Mr. Aaronson, you were here, were you not, when I was reading certain portions of a deposition?

A Yes. I walked out for a moment, though.

Q And you were here when I was reading that portion of Mr. Clar's deposition where he indicated the deflection plate and also that other slanted ramp that you described?

A I am not so sure what you mean by "also." I thought it was one and the same.

Q You told us a little while ago that the deflection plate and the ramp were not one and the same, that there was

a ramp and then a deflection plate?

MR. SHANDELL: Objection, your Honor.

THE COURT: I must say I don't understand the question.

Q Did you hear me reading a certain portion from the deposition where Mr. Clar indicated that there is a deflection plate and that there is also something at an angle like a ramp so that if the chute is not directly over the deflection plate the operation of this ramp will bring the garbage onto the deflection plate and then force it where it has to go?

MR. SHANDELL: I object to the form of the question.

THE COURT: I am going to sustain that. First of all, I don't think there was any need for him to be listening to this. Second of all, as he says, he was out of the room. I don't think we should approach it quite that way.

MR. IVONE: May I have a moment? I will see if I can find it, your Honor.

(Pause)

Q Do you recall my reading the following from page 74:

"Q Now, in the Gobbler-16, is there a slope to one of the walls?

"A Yes. The shock plate.

"Q What is a shock plate?

"A A shock plate is when the waste is dropped down the chutes where we can't get the waste to drop directly onto the top of the compaction plate, which is into the compaction chamber.

"This is a heavy armor plate sheet of steel which the waste hits against, and it slides into the compaction chamber.

"Q And that's on the slope?

"A The shock plate is on the slope.

"Q What is the degree of the slope?

"A It's -- from the horizontal, the including angle on that is about 55 degrees.

"Q And the including angle is which of the angles?

"A At the rear of the machine, which generally goes against the wall, that angle coming down into the interior is one part of the angle, and the horizontal plate would run parallel to the floor.

"Q Did you ever observe bridging difficulties across the gap from the front of the machine to the shock plate?

"A No."

Now, were you here when I was reading that?

MR. SHANDELL: Objection. What difference does it make? He just read them.

THE COURT: I wish you wouldn't keep alluding to that for the reason I mentioned a moment ago. It delays matters and confuses matters for all of us, including you, I think. Let's do it simply and easily.

Q This slanted or this ramp that you described for us earlier, is that a device so that if the machine is not placed in a fashion directly underneath the chute for some reason or other, there is some other means by which to get the garbage into the compaction chamber?

A Yes. I thought that is what I explained before. His Honor straightened out we are going to call that the plate and the other thing the ram so we wouldn't have this ram-ramp problem.

Q I believe you submitted a report in this matter?

A Yes, I did.

MR. IVONE: May I see a copy of that report?

A I have no objection (handing).

MR. IVONE: Your Honor, this will take some time to read. May I have a few minutes? May I suggest a recess?

THE COURT: All right. We will take the morning recess at this point.

MR. REGAN: Could we all get a copy of that report?

THE COURT: You will have to ask the person who has the report. I don't have a copy, Mr. Regan.

We will take the morning recess.

(Recess)

(Jury present)

THE COURT: All right, Mr. Ivone, where is your witness?

H E R B E R T A A R O N S O N, resumed.

THE COURT: Can we move along?

CROSS EXAMINATION CONTINUED

BY MR. IVONE:

Q Mr. Aaronson, I believe you told us earlier that one of your qualifications or something to do with your background was you worked for AMF?

A That's correct.

Q That's American Machine and Foundry, is that correct?

A That's correct.

Q And they are experienced in the manufacture of machines, I take it, is that true?

A Yes, equipment. yes.

Q And in a machine which requires, let's say, a

special safety device such as the interlock, an outfit like AMF would provide such an interlock, is that correct?

MR. SHANDELL: Objection, your Honor. There is no inference AMF designed this machine.

THE COURT: His voice dropped off. I couldn't hear the question. I will have to have it repeated.

(Question read)

THE COURT: I think that should be reformed or reframed, Mr. Ivone.

Q In a machine such as this which you say should have had an interlock on, would a company, a manufacturing company such as AMF, would they have provided such a interlock?

MR. SHANDELL: Objection.

THE COURT: I am going to sustain that because I don't see how, first of all, he can answer that. Second of all, it presupposes something that is not in the record. So I am afraid that if you are going to push that I will sustain the objection entirely unless you qualify what you are asking.

Q Mr. Aaronson, are you telling this Court and jury that in 1970 the standards for the compactor-extruder machine which you examined, that the standards were for that machine to have an interlock on the hopper door?

A Well, we were talking about the engineering principles.

Q Just yes or no. Were there standards that would require it?

MR. SHANDELL: May the witness answer the question?

THE COURT: I would hope so.

A We --

MR. IVONE: I don't want a long story. I want a yes or no.

THE COURT: Just a moment, gentlemen. Please, Mr. Ivone, don't assume the worst. Give the witness a chance. He hasn't said a word that I can understand yet. Don't assume the words. Let's see what happened. If you want the question answered, give him a chance.

MR. IVONE: May we have the question read back?

THE COURT: I don't think it is necessary. We have these interruptions all the time. You understood the question, didn't you?

THE WITNESS: Yes, I did.

THE COURT: Answer it.

A The answer was we were talking about principles rather than standards.

Q Aren't you here to testify as to what the standards were in 1970 that my clients deviated from? Isn't that

what you are here for?

A I don't understand your question, sir. I can't answer that.

Q Did Auto Pak deviate from any standards that existed in 1970 with respect to this interlock?

A They deviated from safety practices.

MR. IVONE: I move to strike the answer as not responsive.

THE COURT: Well, yes, but I think again if you would do two things, Mr. Ivone, it would make it a lot easier for all of us.

First of all, please raise your voice so that we can understand you. Second of all, please give the witness a chance to understand and respond.

Now, I will give you a choice. Either you repeat the question yourself, or, if you insist, I will have the reporter read it again.

Q Did you come here, sir, to testify, in sum and substance, that Auto Pak deviated from the accepted standards in 1970 for the manufacture of compactor-extruder type machines such as you examined?

A Not for the sole purpose. I came here to evaluate the machine, give an engineering opinion.

Q Well, mach'nes are manufactured in accordance with

certain standards, are they not?

A In addition to safety principles, yes.

Q Do you know what the standards were in 1970 for the manufacture of a compactor-extruder machine such as the one that you examined?

A I believe we covered this already, sir.

Q May I ask you again, sir, were there certain standards that were recognized in the trade for the manufacturing of compactor-extruder type machines such as the one that you examined? Were there such standards in 1970?

A Well, I listed some general standards that are applicable and there are related standards. Whether there were specific standards for Auto Pak, I don't know, but there were practices in the industry that related to including a safety device on the access door.

Q Are you telling me, sir, that for an Auto Pak machine, this type of machine, you don't know what the standards were?

A I didn't say that.

MR. SHANDELL: Objection. There is no requirement Auto Pak have their own standard.

MR. IVONE: I am using the expression Auto Pak in a general fashion.

THE COURT: May I suggest that you rephrase the

question so as to avoid this?

Q In 1970, was there a standard, standard of the trade, manufacturing compactor-extruder type machines which were chute-fed?

A Other than those I read or described already, I am not aware of any others, but there was practice in the industry to provide a safety interlock.

Q And when you talk about the industry, which industry are you talking about?

A People that manufacture this type of device.

Q And who are the people who manufactured in 1970 this type of device?

A Hi-Co.

Q Who?

A A company by the name of Hi-Co.

Q How would you spell that?

A H-I dash C-O.

Q And they manufactured them in 1970?

A I have no statistics, but I think they did, yes.

Q And they established the standards for the industry?

A I didn't say that.

Q In 1970, other than Hi-Co, was there any other company, and, of course, besides Auto Pak, was there any

other company that manufactured this type machine?

A I believe there were several others, yes.

Q Are you aware that this machine was designed by a certain individual by the name of Martin Clar?

MR. SHANDELL: Milton Clar?

Q Milton Clar?

A I read that, yes.

Q Are you aware that he received certain patents for this machine?

A There are certain patents listed. I didn't know that he received those, but I will take it as you say.

Q Would it be correct to say that if patents are obtained on a given machine it is because there is something unique about it, is that so?

MR. SHANDELL: Objection, your Honor.

THE COURT: I am frank to say, Mr. Ivone, I don't understand that question, at least in the context of this case. Rephrase it.

Q Mr. Aaronson, before an industry-wide standard can be established, is it correct that you would first have to have an object or something which is being manufactured for a number of years by perhaps a general group of manufacturers?

A That's quite true.

Q And if something had been, let's say, recently patented, would you agree that that machine was probably one of the first if not the first?

A I can't agree with that because that's too general a statement. I don't think I can agree with it just like that. There are many reasons why patents are issued, and I am not that familiar with issuance of patents.

Q Do you know whether at the time the Auto Pak -- let's say the first Auto Pak came out, whether there were any similar to it, chute-fed? I am talking about chute-fed now.

A Whether there were any other companies that constructed them?

Q Yes.

A Is that what you are asking?

Q Yes, chute-fed.

A Chute-fed. I don't know, but I am sure there must have been.

MR. IVONE: I move to strike that answer as not responsive.

THE COURT: Then the answer is, "I don't know"?

THE WITNESS: I am not sure.

THE COURT: All right.

Q Are you an expert in evaluating compacting and

extruding machines of this type?

A Yes, from the mechanical and safety point of view, yes.

Q And you are telling this Court and jury that you don't know that this was devised sometime in 1965 and 1966 as the first chute-fed machine?

A I do not know that because I haven't researched the history aspects of this. I think that really has very little to do with the mechanical or the safety aspects.

Q You don't think researching the history would have something to do with determining what were the standards in the industry?

A I don't understand your question what one has to do with the other. I fail to see the connection or anything like that.

Q Don't you want to determine what were the standards in that industry?

A We have already covered the problem of standards, sir. I think we have said it several times.

Q In other words, I can't ask you any further questions along that line about standards?

A I don't understand -- are you trying to make me respond to a question? I don't understand you.

Q Mr. Aaronson, I would like to know, did you make

any inquiry as to what were the standards, let's say, in 1965, 1966, 1967, '68, '69, 1970, with respect to the manufacture specifically of this machine?

A Sir, I gave you my report. I read out of my report the standards I found were available. There may have been others. I don't understand what you are leading to or what your question is.

Q You also read from your report a New York law with respect to industrial code, did you not?

A I did, and I --

Q And that you said applied here and the Court said it did not, did you hear that?

A If you read my report thoroughly, I said it was a related matter, and that's how I described it in my report. I think I prefaced it that way when I read it.

MR. SHANDELL: Objection.

Q Do you agree, sir, that in 1966, and you are saying that the industry code would apply to include 1970, would you agree that there is no requirement in that code calling for on a compactor-extruding machine such as this to have an interlock?

MR. SHANDELL: Objection, your Honor. A question of law for the Court.

THE COURT: It is not a matter of a question of

law. I will allow whether or not he by chance knows of any statutory provision in the State of New York. I think that's a fair question. We are not asking him to construe the law particularly.

Do you understand?

THE WITNESS: Yes, I understand.

MR. SHANDELL: Are we talking now about the State of New York?

THE COURT: That's correct.

Q You also understand, Mr. Aaronson, we are talking about this particular machine, do you understand that, not a grinding machine?

A I am not aware of any particular standards that relate to compactors, refuse compactors, in 1970.

THE COURT: You mean by that statutory standards?

THE WITNESS: Statutory standards, yes.

Q And you do not know of any industry standards -- and I am talking about specifically the industry that comes out with this type machine -- in 1970 or shortly before?

MR. SHANDELL: Your Honor, he is trying to limit the industry to this one machine manufactured by this one company.

THE COURT: You are objecting, correct?

MR. SHANDELL: Objection, your Honor.

THE COURT: I will sustain the objection to this extent: I assume you mean in relation to a compactor of garbage.

MR. IVONE: Yes, chute-fed, like this.

THE COURT: Fair enough. Put your question.

Q Do you agree that there is no standard in the industry that manufactures and puts out the compactor-extruding type machine that you examined, chute-fed, in 1970 or shortly prior?

A Well, the industry I believe is not limited by a chute-fed compactor. I think the industry is broader.

Q Answer my question.

A I cannot answer that question.

Q We know that Mr. Shandell has said that. That is his position. Let me know what you found with respect to the standards?

A I heard Mr. Shandell say that, but I am saying it myself.

Q Did you find the standards?

A I read to you the standards of refuse handling equipment, and I think it is in my report. Unfortunately, you took it away, so maybe you can read it yourself. You took my copy.

Q Didn't you read to us with respect to the standards

of the American National Standards Institute, Inc.? Is that what you are talking about?

A I think you are unfair. I have that U.L. standard in there that precedes that and I don't have my copy here.

Q Did you not refer to Section 102?

A I referred to three sections there. I am sorry. If you give me my copy I will be able to look at it. I can't recite this from memory. I am awfully sorry.

Q I am not asking you to recite it word for word.

A Even by number I can't identify it.

Q But the substance of what the American National -- withdrawn.

The substance of what the American National Standards Institute provided in its Section 102 which you read to the Court just a short while ago concerning interlocks has not been specifically specified, didn't you read that?

A Sir, we read it. Why don't we take it as it says -- what it says in there.

Q Did you read it?

A Yes, it must be in the record.

Q Isn't it true that this particular organization that you cited as the standards did not call for the interlock as being on it?

A That's not true. It says so. It specifies that interlocks have to be evaluated depending upon -- if I remember correctly, you can read the words -- depending upon the operation of this thing once it is installed. I believe it says so. You are putting me at a disadvantage by asking me to quote from something that you have in your hand.

Q In other words, the only standard that you are able to quote and cite to us as the basis for your opinion here is a standard which in substance says the interlocks are not required but if it is such a type machine that perhaps it should be put on, put it on, is that it?

A No, that's not so. That is not the basis of my opinion. That is what I object to.

Q Reading from your page 8, Section 102 dealing with waste disposers, standards for safety, would you tell us, please, what kind of a waste disposer we are dealing with?

A Any kind of waste disposer?

Q What?

A Any kind of waste disposer.

Q Could that possibly be one of these motorized waste disposers that they are talking about here?

A It is the waste disposer industry, sir, and they manufacture all different types. Now, this is general. You

asked me for something general. This relates to the entire industry of garbage disposal.

Q Section 102. You have left a portion out of it. There are three dots and then it starts with the details of guards, safety releases, interlocks, et cetera, are not specified but the need for such accessories and their adequacies, if provided, are to be determined from a study of the complete disposer, its operating characteristics and the likelihood of accidents resulting from other than gross negligence.

A That's what I wrote?

Q Have I correctly read it?

A Yes.

Q Everything you put in there?

A Yes, unless I made a typing error.

Q They are referring to the type of accident which would be likely to occur even if a person was careful, isn't that what they are saying?

MR. SHANDELL: Other than gross negligence.

Q Isn't that correct, other than gross negligence?

A I didn't hear that last word. I am sorry. It dropped off.

Q They are talking here basically about the situation where an accident can happen in operating a machine even

though a person is careful?

A Is what?

Q Even though a person is careful?

A Careful?

Q Yes.

MR. SHANDELL: Objection. It plainly reads from, "From other than gross negligence," which is something other than what Mr. Ivone talked about.

Q Mr. Aaronson --

MR. IVONE: I will rephrase it, your Honor.

Q What do you understand there by gross negligence?

A I am really not sure what gross negligence means.

Q You are citing this to us, Mr. Aaronson.

A I am concerned -- this is, I think, a legal problem and not a mechanical engineering problem. I am interested in the mechanical aspects of it. You are an attorney. Maybe you can explain what gross negligence is.

Q You mean in the American National Standards here they are talking about legal concepts?

A I think -- correct me if I am wrong -- I think negligence refers to a legal area and not to a mechanical-engineering area.

Q Doesn't it mean carelessness to you? Isn't that what it means?

A I can understand the term in common sense negligence. I am not sure whether I understand gross negligence.

Q Let me ask you this, Mr. Aaronson: are we talking about the situation where even if a person who is very careful can still get injured, isn't that what they are talking about in Section 102?

A Yes, it should protect everybody against all accidents regardless of how they occur.

Q All right. I believe, Mr. Aaronson, you changed it a little bit.

A No. I haven't changed anything.

MR. SHANDELL: Objection.

Q Are they referring to accidents that occur with a particular machine even with the greatest of care that a person is using in operating them?

MR. SHANDELL: Objection, your Honor.

THE COURT: I will allow what the witness' understanding of this is. So assuming that that clause is put on the question, I will allow it.

A My understanding of this paragraph is that the machine should be equipped in such a way that any operator, any person in or about that machine does not get injured, and the gross negligence part I must be very frank with you I am not sure what gross negligence means. Perhaps you can

enlighten the Court.

Q Suppose a person has been told not to put his hand into this Auto Pak machine when the Auto Pak machine is operating. Suppose this person disregards that warning and puts his hand into the Auto Pak machine while it is operating. Suppose further that the hand gets cut off during the process. Would you understand that as being the type of negligence that they are talking about in Section 102?

MR. SHANDELL: Objection, your Honor.

THE COURT: Yes, I will sustain that as to form.

Q Let me put it a different way, then.

Assuming those facts that I have just given you, are you telling us that this section that we have just been reading encompasses or excludes that particular situation --

MR. SHANDELL: Objection.

Q -- because of the conduct of the operator?

MR. SHANDELL: Objection.

THE COURT: Again I would sustain the objection as to form.

Q By the way, do you know the practices or the accepted practices, that is, to operate such a machine?

A The accepted practice?

Q Yes.

A I believe the only part that the operator by design -- I am not talking about what eventually happens once the machine is in operation, but the way it is designed is to take those garbage bags, wait until they have reached a certain length, tie first the other end, the blind end, and then after they have reached a certain length, tie the other end and then move it on that conveyor to some area where they are going to be transported further away. That is what I understand is the design intent of that machine.

Q Assuming for the moment that a person such as a porter who is operating the machine is told not to put his hand inside the machine and that if he has to put his hand inside the machine to stop it first, assume further that he puts his hand inside the machine, did not stop it, his hand was cut off.

Now let me ask you this, sir: is such conduct consistent with accepted practices?

MR. SHANDELL: Objection, your Honor.

A Would such conduct be consistent with accepted practices?

I don't know what you really -- the question hasn't really been connected up, has it?

Q Is it consistent with accepted practices for a person who has been warned or told not to put his hand into

the machine unless he stops it, is it consistent with accepted practice of such an operator to put his hand into the machine without stopping it?

MR. SHANDELL: Objection, your Honor.

THE COURT: No, I will allow that. I take it you are familiar generally with the way you should operate extruding or compacting machinery, isn't that so?

THE WITNESS: Yes.

THE COURT: I will allow it.

A I am not a psychologist so I don't really know. I have no standards that relate to deviating from instructions. I don't know.

THE COURT: I think maybe you may be confused as to what he is seeking. He wants to know your view, as one who has told us that you are experienced with not only as a mechanical engineer but have some experience with extracting, compacting and extruding machinery, as to whether or not it would be acceptable operating practice to go into or put one's hand or arm into a machine of this nature with awareness that the machine was on and operating.

THE WITNESS: In this particular case, it was needed to do this because --

THE COURT: No. Listen to me, sir.

Assuming generally that we are dealing with com-

pacting machinery, not necessarily this machine at all, but assuming generally we are dealing with compacting machinery, would you consider it to be good operating practice to put your hand into the hopper of such a machine at a time when you as the operator knew it was moving or on?

THE WITNESS: I would not, but I can't vouch for anybody else.

THE COURT: We are not asking you to be a psychologist.

THE WITNESS: I can't say that. If I get instructions, that is precisely why these safety features have been put on.

THE COURT: That is not my question. As I understand counsel's question, he is simply asking whether or not you would consider it good operating practice to put your hand in a running compactor machine particularly if you had been warned or instructed beforehand not to do this?

THE WITNESS: I can't really answer this. Because I am not a person that sticks in somebody else's mind. What other people do -- it is not a question of practice. In other words, if people are told not to do certain things and they do them, I don't know how I can answer that.

THE COURT: Would it be all right if I qualify the question to say assume there had been no instructions at

all on this subject, would you think it good practice as an operator of a compacting machine to put your hands in or near the machinery when it was moving or operating?

THE WITNESS: If he is aware of what the dangers are, I would say no, don't put your hands in. If there is no awareness of this, I don't see how I can answer this.

THE COURT: Go on to something else.

THE WITNESS: I really can't answer this. I am awfully sorry.

Q Getting back to something I was inquiring about earlier concerning the interlock, was it the standard at AMF in 1970 to manufacture a machine of this type with an interlock?

A I am not aware that AMF manufactured compactors.

Q Well, I believe you have been telling us that these safety standards that you have been talking about are not necessarily limited to compactors, they are for moving machinery in general.

A That's quite true.

Q Bearing that in mind, could you tell us in 1970 would AMF, with respect to a type moving machinery like this, install an interlock on the door?

A Is this a hypothetical question, sir?

Q Yes.

A If it is under my control, while I was at AMF an interlock would have been installed. I cannot talk about AMF. It is a large organization. I can't talk about it in general.

Q AMF had its own standards and rules and regulations, did it not?

A Oh, yes, they did.

Q And its rules and regulations require that an interlock would be placed upon a door such as we have been describing here?

MR. SHANDELL: Objection, your Honor. A machine that AMF designed or a machine they fabricated for somebody else?

THE COURT: I don't know what we are talking about.

Let's go back again, Mr. Ivone. Rephrase the question so we get around these objections and ambiguities, please.

MR. IVONE: It is not ambiguous because he was answering, your Honor.

THE COURT: I don't know about that either, but in fairness to an objecting lawyer, I would agree you can rephrase that so we understand it.

Q Back in 1970, did AMF have standards such that

would require it to put an interlock on a door such as the one you have described to us here?

MR. SHANDELL: Objection, your Honor. Same objection.

THE COURT: I don't see anything wrong with the question, if you know.

THE WITNESS: First of all, there are too many conditions. I can't answer it fully. I am not aware that AMF manufactured this type of equipment. But I can talk about it in general. You don't want me to.

THE COURT: I don't know. He says he doesn't know, sir, that they manufactured such a machine.

Q I never asked him if they manufactured such a machine.

A That was implied in your question.

THE COURT: Please, gentlemen, please. He says he doesn't know that; therefore, he can't answer that. Do you hear me?

MR. IVONE: I heard your Honor and I also heard the witness. He is not saying the same thing.

THE COURT: I am sorry, but I don't agree with you. Let's go on to something else.

Q Let's take a piece of machinery and a door opens into a portion of it which, if you put your hand in you

may cut your hand off, and I don't care what kind of machinery it is, did AMF have standards requiring that that door have an interlock system on it?

A I am not aware of standards, but I know it was a design practice to do so.

Q Are you aware that this particular machine, this very machine that you examined, was manufactured by AMF? Are you aware of that, sir?

A No.

MR. SHANDELL: It was fabricated by AMF, it is not their design.

A I am not aware of it.

THE COURT: He is not aware of it. Now let's go on to something else other than that.

Q You told us something about other industries where they have used interlocks and you used as an example the seat belts. Do you recall, sir?

A Yes, I used it as an example.

Q Incidentally, this interlock system on the seat belts, isn't it something right underneath the dashboard you can unplug it and disconnect the interlock system?

A I think it was the 1974, I believe it was not accessible readily, not on the seat belt on the 1974 car. This restriction has been removed since.

Q I am not talking about the restriction of having the interlock system. I am talking about the interlock itself could be removed by going underneath the dashboard, isn't that correct?

A By a mechanic, as I understand. I am not that familiar with the mechanics of it. I only know that they had interlocks.

Q You have testified, have you not, in many cases involving automobiles?

A Yes.

Q You are quite familiar with the operation of automobiles and its mechanics, are you not?

A Yes.

Q As a matter of fact, haven't you just recently testified in something dealing with a steering case?

A Yes.

Q How recently was that?

A A steering situation? Are you talking about a steering situation in New York? Would you qualify it, please?

Q Well, you testified against Chrysler, did you not? Was that Rothholz against Chrysler?

A The names sounds familiar. I can't place it right now whether it was a steering problem.

Q How about Trezat against General Motors, you

testified there, too, didn't you?

A Yes, that was a steering situation.

Q I take it then you are quite familiar with the operation of automobiles?

A Yes, I am.

Q So you know, don't you, that you can disconnect that interlock system on the seat belts?

A As I told you before, I only know that there is an interlock and that it is not readily accessible by anybody. Any mechanism can be bridged. That is true of almost anything that has been designed by man so far.

Q And, as a matter of fact, an interlock theoretically, if it had been installed on this particular unit that we are talking about here, that also could have been removed or bridged or circumvented, is that correct?

A It is a question of degree. You can make it relatively tamper proof. But I will agree with you in general that anything can be tampered with.

Q Would you also agree, sir, that there was an off switch button within about two, three feet of where an operator would stand if he were standing in front of the machine?

A That would depend upon what side he was standing on.

Q Let's say facing the extruding portion of it, the side is on the left, is that right?

A What's on the left?

Q The side where the control panel was in this case is on the left?

A As you face it, yes, on the left.

Q That would be roughly three feet? He would have to take, what, one step, shut it off and then go into the machine if he wanted to, isn't that true?

A He could have stepped on the other side of the extrusion, too, and that would have been much further away.

Q If he happened to be on the right side of the machine, then he would have to actually step over and around maybe an additional foot or two?

A You demonstrated rather simply. I think it was a sixteen inch high tube and if there was a garbage bag attached to it, I don't know how long it extended, he would have to walk way around. You have pictures there. You can see the approximation.

Q You mean if he happened to be around the right side he couldn't step over this garbage bag type thing, is that what you are telling us?

A You are putting me at a disadvantage, sir, by not showing me what you are referring to.

Q I first want to show it to the jury.

A Then I will wait to answer until you show it to me. What are you talking about, please?

Q Whatever you are talking about. You are talking about the bag, aren't you?

A The hopper is over here, sir. The bag is at the other end. There are all kinds of structures in the way. As I recall it when I investigated it, I don't think it is that easy to come across. What I had to do all the time is walk around here. Besides, it has a roller conveyor. You know a stop switch has to be accessible. It can't be any old place. There is no law that says -- I am sorry, law I shouldn't have used.

Q You can use it.

A There is no reason to assume that the operator is always standing on the left side. He could stand on the right side, he could stand anywhere to do this.

Q When you operate a car you don't sit in the passenger seat, do you, you sit in the driver's seat, don't you?

A Because that is designated, but there is no operator station over here. This works automatically.

Q Are you aware that he knows that the control panel is on the left? Are you aware of that?

A I don't know whether he knows, sir. You are asking me a question that I cannot answer.

Q Didn't they give you a history here?

A Of what? Of what he was aware of?

Q Did you talk to Merced, did you ask him, did you ask them?

A Merced was a problem because he didn't speak English or very little English, and most of my information came from Mr. Portnoy and all the information that I received from Mr. Portnoy is contained in the report that you have read. That's all I know about as far as what Mr. Merced knew or what his actions were and I don't know anything else. I don't know what he is aware of.

Q Did you ask anybody was there some reason this switch on the panel was not shut off before you went in there?

A Did I ask whether there was any reason?

Q Yes.

A I don't recall whether I asked, but I understand he was trapped in the machine.

Q Trapped?

A His hand was being cut off. I don't remember which hand it was, his right hand or his left hand. I don't know.

Q Were you told while the machine was operating he

put his hand in there? Were you told that?

A As I understand the accident --

Q Just answer my question.

A Obviously he must have been in the machine. Otherwise his hand wouldn't have been cut off. How else? I don't understand your question, sir. Are youtrying to ask me to verify?

Q My question is were you told that when he put his hand in the machine the machine was in operation?

A I don't have to ask him that. I see his hand. I mean that's what happened. The machine was in operation while he was in contact with the ram.

Q Did you ask him did that button, the on-off switch or whatever you wish to call it, did it operate, was it operable? Did you ask him that or ask his lawyer, anyone?

A I don't know whether Iasked him. If it is not in there, I don't think I asked him.

Q Is it something that occurred to you as you were reviewing this entire matter?

A I don't even know whether Mr. Merced knew about that switch. I don't know what he knew, what instructions he had received. I think you ought to get that from him. I am concerning myself with equipment-related things, not what -- I am concerning myself with the safety aspects of that.

I want to make sure operators don't get hurt regardless of what they do.

Q Part of your background as teacher is in industrial relations, including safety and management, didn't you tell us that?

A Beautiful. That's exactly what I teach my students.

Q Don't you teach your students that they have to use common, ordinary care?

A More than that. The students are the ones that design the machine. They are not usually the ones that operate them. I tell them, you have to design these machines so nobody gets hurt regardless of what action they take or do.

Q As a matter of fact, you have an automobile and an automobile engine is running.

A Yes.

Q When you pick up the hood and you are going in there to work on something, automatically that engine cuts off, doesn't it?

A Not in my car.

Q And in no car, in fact, isn't that true? Isn't it true?

A I wouldn't say that. It is possible.

Q Would you agree that an automobile engine is dangerous if you put your hand in it while it is running?

A Certain aspects, yes.

Q Wouldn't you agree that mechanics work on automobiles, automobile mechanics?

A These are trained people. We are talking about an operator who may be a semiskilled person. I don't think you or I would go into a car if we knew nothing about it. We are talking about people that have to operate -- in this case they had special problems like it didn't work automatically, they had to keep on going in or they developed this procedure.

Q You wouldn't expect, would you, a person even without any education to put his hand nearabouts the fan -- the fan of a car -- when it is operating, would you?

A Sir, I have seen so many accidents in my life, I wouldn't vouch for anything of that nature.

Q There are people that do things like that?

A Right, and that's what we want to protect ourselves against.

Q And you don't have an interlock system on the hood of a car to protect such people?

A Maybe we don't. I wouldn't even know whether it is generally so, but I would say most cars -- my car

doesn't have it and most cars don't, but there may be cars that do.

Q Did you ever hear of a car that had an interlock system for the general public?

A Sir, I just told you I haven't examined every single car in this world and there may be cars. Maybe Rolls Royces has a car that has an interlock. I don't know. It is an expensive car. They may have interlock features. I don't know.

Q In the days when companies were selling like a million cars a year, did any of those cars have interlock systems on it?

A On the hood?

Q On the hood.

A As I told you already, sir, you asked me for a general truth. I said specifically of all the cars that I am aware of, there are no interlocks in the hood, but I don't say that that excludes all the entire range of cars, the entire population of cars. No, I certainly cannot go along with that.

Q I believe you told us that this was gravity-fed, this particular machine, is that correct?

A That's correct.

Q And meaning simply that people up on the seventh

floor or tenth floor or wherever they happened to be would drop garbage and by the weight of the garbage it would find its way into the machine, right?

A That's right.

Q You find no fault with gravity-fed machines as such, chute-fed?

A Not as such. If there are blockages, then that creates a problem, I would say.

Q If there are blockages?

A Yes.

Q Would you say, sir, that as a general routine it would be bad practice when a machine is designed to accept the flow of garbage as it comes down into it for porters or what have you to speed it up to make the garbage come down faster manually?

A I am not so sure. You mean if they had to maintain this garbage flow to go out. I am not so sure what you are saying. Actually, yes, if it doesn't come through, then I think they should speed it up because that creates all kinds of other problems.

Q I am not talking about when it doesn't come through. I am talking about when it comes through but somebody wants it to go faster.

A I don't see how you can make it go faster. If a

guy puts it in on the tenth floor and a guy stands in the basement, I don't see how he can make it go faster.

Q If he told us the practice was to shut the machine off at night and let there be an accumulation of a floor or two floors of garbage pile up --

A I don't know about the accumulation, but I know the practice was the machine was shut off at night.

Q And that the practice further was because they had this large amount of garbage, that they would poke it with a stick to make it come down faster, a certain Mr. Melendez testified yesterday.

A You are talking about garbage at night being clogged. It doesn't come down faster because you poked it. That's gravity. There is nothing you can do about it.

Q Just a moment, sir. His testimony was not with respect to clogging, but to make it come down faster so they could do the job faster.

A Maybe Mr. Clar can explain it. I don't know what Mr. Clar meant.

MR. ISAAC: I respectfully object to that question as to form and substance.

THE COURT: I would certainly agree that we don't have to recite what Mr. Melendez, or whoever it is you are referring to, Mr. Ivone, said. Start over again.

Q Would you agree that if its purpose is just to speed up the flow of traffic, the flow of garbage, not to unclog anything, but to speed it up, that it is bad practice to be poking it with a stick?

MR. ISAAC: I object.

A I don't understand the question.

THE COURT: What did you say, Mr. Isaac?

MR. ISAAC: I said may I respectfully enter an objection to that question?

THE COURT: I am inclined to sustain it, particularly since the witness apparently doesn't understand it in any event.

Is that so?

THE WITNESS: I don't understand it.

THE COURT: Let's go to something else.

Q When the chute itself opens directly over the hopper, you would say then that the design was acceptable?

A I don't think I said that. I said it would facilitate the breaking up of bridging. It would be a better design than the current one. Yes, I said that. I didn't make any mention of acceptability. I think that depends upon some kind of data that you can obtain when this is in operation. But from an engineering point of view, it would tend to break up bridging problems, yes, sir.

Q You told us also that if you don't have an interlock system then you should have the door locked.

A Yes.

Q You see on the very first picture there, Figure No. 1, do you see the two hasps?

A Yes.

Q And those are two metal things that go over the -- what do you call that, an I hook?

A Some sort of a latch.

Q Is there anything to prevent that from being locked?

A I don't understand what you mean. This is just an ordinary latch, sir. It is not a lock.

Q Is there anything to prevent that from being locked?

A You can put a lock on, certainly.

Q If you want a lock on, you put a lock on. And if you don't want the porters to open the door then you put a lock on, is that it?

A Well, then they would never be able to move any garbage in this design because you can't get in any more. That is precisely why they went in. Otherwise they wouldn't have it. If it operated properly, this would work automatically. That is precisely what they did in order to insure that they

didn't get vermin or anything it is that results when you accumulate garbage. If this thing backs up, the second floor can't put garbage in because it is backed up.

Q Are you aware that the recommended use of this machine was to keep it on continuously?

MR. SHANDELL: Objection, your Honor.

MR. ISAAC: Objection.

THE COURT: Again, I think that's a fair question but it ought to be tightened down. Could you rephrase it?

Q Have you been told that the recommended procedure was to keep the machine going continuously?

A I have not been told.

MR. ISAAC: I object to what he has been told, your Honor.

THE COURT: Assume that a representative of the installer -- you see, Mr. Ivone -- has testified that. You may avoid this objection.

Q Assume that a representative of the installer has testified that the installer recommended that the machine be operated continuously, in other words, that it not be stopped, would that have some effect upon your opinion?

MR. ISAAC: I object.

THE COURT: Overruled.

A My opinion as to what?

Q Concerning blockages.

A Yes, I have an opinion. My opinion would not have changed, yes. Blockages would exist whether the thing is working.

MR. ISAAC: I didn't hear the end of it.

A I am sorry. Blockages had nothing to do with whether that thing was working continuously or not.

Q In other words, it would make no difference whether there was garbage stacked up a floor or two floors high and just waiting there for the machine to be started or whether on occasion someone dropped some garbage down, it hits the deflection plate and gets extruded, there would be no difference?

A I think we don't fully understand the operation of that machine. If occasionally a piece of garbage drops down, that wouldn't even activate that machine, it would have to wait until it hits the electric eye. By that time it starts to build up and then the bridging occurs.

Q All right. The bridging occurs as soon as the electric eye activates?

A No, I didn't say that. I said when there is an accumulation of garbage in the hopper and that starts to rise and then eventually the electric eye gets activated, but by that time you may already have bridging occurring.

There are many possibilities how this works. But it doesn't just work because a garbage bag falls down.

Q As a matter of fact, if someone quickly puts his hand in there and the ram is not moving at that particular moment, he doesn't activate it very quickly, does he?

A There is a five second delay between the interruption of the light beam and the time that the ram becomes activated. In other words, it has to be interrupted. That can come from any source. It doesn't prescribe garbage. It can also come when that sensitive device becomes displaced.

Q Is this particular machine a completely automatic machine?

A It is advertised as such.

Q Has it been your opinion that it was a completely automatic machine?

A No. It requires all this manual assistance. That is why it is not completely automatic.

Q Have you ever said that the compacting cycle consisting of a single ram retraction and extension stroke is completely automatic?

A Most certainly, and that's exactly how I said it.

Q And have you also described the photoelectric system the way it is activated?

A Yes.

Q When the material enters the hopper?

A Yes.

Q And initiates the cycle automatically?

A Yes.

Q Did you also describe how the cycle terminates when the ram has returned to its normal fully extended position as controlled automatically by a system of electrical light systems and relays, did you also say that?

MR. SHANDELL: I object to counsel reading from a document not in evidence.

THE COURT: Your witness on direct referred to it. I don't think there is any rule that prevents opposing counsel from doing that.

A I just didn't hear the second word you mentioned. If that's what I said, that's what I said, yes.

Q I am reading it.

A I said I didn't hear the second word. If you read what I said, that's what I said, yes.

Q With respect to the control panel, besides the on-off switch it also contains a reverse switch, does it not?

A Again, you have the document in front of you. Please, it is in there. Then it is so. It is difficult for

me to recite this by heart. But there is a reverse switch, yes.

Q And how does that operate?

A You push it -- I think it is a toggle switch. Would you mind reading it? I think it is a toggle switch. If you activate it, then for any ongoing ram motion, let's say if it is a forward going, if it is an extruding motion, an extruding stroke, it will reverse. In other words, it will not complete its extruding stroke. And I believe it is fully explained in there.

Q In other words, you don't remember it, though, today, actually whether it is a toggle, a button or what?

A Sir, it is in there. Please. I wrote it in 19 -- whenever the year was, and I stand behind it, what I wrote.

Q It is actually a push button which has to be held, is it not?

A Sir, I prefaced it. I said I didn't exactly remember what it is, and if it is in there, that's what I observed and what I recorded. You are putting me at a disadvantage by reading from a document that I don't have in front of me, and I wrote that report -- would you look at the date, please -- about two and a half years ago.

Q If you want to look at it, tell me, and you will look at it.

A As I said, that's what it is. That's what I observed and that's what I recorded.

Q That reverse button makes the ram go backwards and then if you want to, you can shut the machine off and have that ram in the back position so as to get any object out if you wish to get some object out that may have been stuck there?

A That will put it in reverse and you can stop it there, yes.

Q If I may look at that again, your report.

Anytime you want to look at it again, you may have it.

With respect to the control panel and the stop switch, based upon your testing, when you turned that off the machine stopped, isn't that correct?

A I believe it is in there and that's what I said and that's what it is.

Q Did you notice also that there was an electrical junction panel on the wall?

A You are talking about a circuit breaker?

Q It is an on-off switch which turns off all electricity to the unit or gives electricity to the unit.

A Do I call it a circuit breaker in my report? That probably would be under Item O if you look in my index.

Circuit breaker, yes, sir. Is that what you are talking about?

Q The panel switch. It is not a panel switch. It is a junction switch on the wall?

A Yes. I call it a circuit breaker.

Q You have described to us something about interlocks on an elevator which is automatically activated, the automatic elevator.

A Right.

Q Those interlocks don't apply when it is operated by some elevator man, do they?

A Yes, they do.

Q You mean you have never seen an elevator man who partially opens the door and he is not quite level at the floor yet and meanwhile the door is opening?

A Sir, I believe there is a New York Building Code that requires interlocks on all elevators regardless whether they are manual or not. Sometimes these interlocks are activated slightly before the elevator gets to the level. Yes. But I don't know what you are referring to about a guy opening the door partially.

Q A lot of these elevators I remember some years back were operated by porters, were they not?

A We are talking about modern times, sir. Present

day elevators all have interlocks, certainly New York City.

Q Between 1965 and 1970, you never saw these elevators operated in the loft buildings of New York?

A Yes, I certainly did and they have interlocks.

Q They were operated by porters, weren't they?

A But they have interlocks, sir.

Q With respect to an interlock system, would you go into what would appear to be ostensibly a dangerous piece of machinery with saw teeth on it and a ram, would you go into that machine even with an interlock system without shutting off the juice, the electricity?

MR. SHANDELL: Objection.

THE COURT: I am sorry, Mr. Ivone, but I think there is an unintentional flaw in your question, perhaps. If the interlock were working, as I understand it, when you opened the door to go into the machine the machine would go off. So you can't mean that. Rephrase it.

Q Would you rely strictly upon the interlock system before going into a dangerous piece of machinery?

A Would I rely on it?

Q Yes.

A Well, it certainly is a means for preventing accidents. I don't know what you mean by rely. You can double and triple safety, put two interlocks on, if one goes out you

can put another one on. I am not so sure what you are trying to say.

Q Mr. Aaronson, if you had to go into a machine such as this where there is a ram with saw teeth at the front of it, and I believe you have even described it in your report as saw teeth, would you rely upon the interlock system exclusively or would you make doubly sure and shut off the panel box?

A Are you talking about me personally?

Q Yes.

MR. SHANDELL: Objection.

Q I am talking about you.

THE WITNESS: Overruled.

A I happen to be a safety bug by nature. I probably would take care of many other things, but I wouldn't expect other people to follow exactly the same procedure.

Q Mr. Aaronson --

A I don't know what you are trying to say. You are talking about me personally.

Q The question is very simple.

A I answered it.

Q Would you rely upon the interlock system exclusively if you have to get into that machine?

MR. SHANDELL: Objection.

THE COURT: Overruled.

Now listen to the question.

THE WITNESS: I personally would take more safety precautions. I personally.

THE COURT: What would you do?

THE WITNESS: I would probably shut off the machine, too.

THE COURT: Anything else?

Q Did you receive any history --

THE COURT: Excuse me, Mr. Ivone. If you are going to go into something else, perhaps we had better break for lunch. How much more time will you need?

MR. IVONE: I don't think that I will take too long. It depends how the answers are. Anything you want.

THE COURT: I think we had better break for lunch. We will resume at 2:15, Miss Stone and ladies and gentlemen.

MR. REGAN: Your Honor, I must press this point. Could we get some arrangement during the luncheon recess --

THE COURT: I told you three times now press your point with the gentleman who controls this report.

MR. REGAN: He can tell me he doesn't have an extra copy.

THE COURT: You are entitled to see this report.

You know that and so does Mr. Shandell.

MR. REGAN: If I could have the report during the luncheon recess it would save time for everybody.

THE COURT: I agree. Give him the report so he can read it during the luncheon recess.

MR. SHANDELL: I need one copy. Mr. Ivone has a copy.

THE COURT: Look, Mr. Shandell, when you produce these things you have got to be at least charitable towards your adversaries. I am asking you to give a copy. I am not doing it arbitrarily. It delays matters if they don't see it.

Step down, Mr. Aaronson.

MR. SHANDELL: Your Honor, may I approach you for a moment on a matter extraneous to the case?

THE COURT: I don't want to discuss anything extraneous to the case. What do we have to do that for?

MR. SHANDELL: It is a matter of personal concern.

THE COURT: Why don't you just ask me.

MR. SHANDELL: Thank you. I have a judge over next door pressing me on another case. He might accept a certificate from your Honor that I am on trial before your Honor and let me go.

THE COURT: Wait a minute. You mean to say that

he won't accept your word you are on before me?

MR. SHANDELL: That seems to be the case.

THE COURT: If you tell him or have your associate tell him that you are on trial before me and if he doesn't believe it, you can have a number here of the robing room and he can call me and I will verify it. I am not going to the trouble of making out a certificate for anybody like that.

(Luncheon Recess)

AFTERNOON SESSION

2:15 p.m.

(Trial resumed - jury present)

THE COURT: Come up, Mr. Aaronson.

H E R B E R T A A R O N S O N, resumed.

THE COURT: Do you have any more questions, Mr. Ivone?

MR. IVONE: Yes, sir.

CROSS EXAMINATION CONTINUED

BY MR. IVONE:

Q Mr. Aaronson, did I understand you to say that large accumulations of waste material that may be accumulated because they are sitting there, let's say, overnight one story or two stories high, that in and of itself would not affect the free flow into the machine?

A No, I didn't say that.

Q No, you didn't say that or no, it is not so?

A I am not so sure -- it would not affect?

Q It would not affect it?

A The operation of the machine?

Q That's right. Perhaps I can clarify it a little more.

Whether this machine was operating constantly or whether it was allowed to stop and then there is an accumulation

of garbage or waste material, you know, overnight, sort of stacked up, this large accumulation itself could not cause any blocking?

A No, I didn't say that, no, I did not. It would cause blockage, tend to cause blockage.

Q Then if that happened, there is a large accumulation which has caused a blockage, then someone would have to go in there to dislodge it, to get it moving, is that correct?

A In this case, yes.

Q And if someone has to go in there, however it has to be done, to dislodge the blockage because it has been blocked up a floor or two floors high, would you say that the proper practice with this machine would be to shut off the machine and then dislodge it?

A Well, I don't know about the proper practice. It is a question of having to push out this garbage. It means they would have to --

Q Basically --

MR. SHANDELL: May he finish his answer?

MR. IVONE: I thought he was finished.

Q Have you finished?

A No.

Q Finish it.

A In this case they would have to unblock it, let some of the big garbage drop down, keep going back and forth. I don't know if that would be a good method in this particular case if the object was to push garbage out.

Q It would be a safe method, would it not?

A It would be safer.

Q If you shut the machine off, it is completely safe, isn't that so?

A Yes.

Q When a machine or, rather, when there is material which is stacked up, is there also a lateral force, not only a force downward but lateral?

A Where?

Q Well, in the hopper?

A Yes, there are lateral forces.

Q And when the garbage, let's say, is stacked up one story or two stories above, would you say that there is a lateral force upon the waste in the hopper?

A Yes.

Q Would you agree, then, sir, that the lateral force of the waste in the hopper itself is conducive to causing blockage?

A Yes.

Q Isn't that, incidentally, called Quossoins

ratio?

A I don't know what it is.

Q Isn't there a Quossoins ratio which deals with a lateral force?

A I know there is a Quossoins ratio but that has nothing to do with what you are saying. I don't know what Quossoins ratio is.

Q Does it deal with lateral force?

A Does what deal with lateral force?

Q The ratio you just mentioned?

A No, it does not deal with lateral forces.

Q Does it deal with ratios as between materials stacked up and the lateral force that takes place down at the bottom?

A No. That is not the ratio I am talking about. I don't know what ratio you are talking about.

Q You tested this particular machine, I believe you told us already, correct? You tested it?

A I operated it, yes.

Q Did you find any operational difficulties?

A It did what it was intended to do. It was an empty machine, though. There was no garbage.

Q You had no garbage in it?

A There was no garbage so I didn't put any in.

Q Didn't you test this over a certain period of time and ask someone to manually throw some garbage down from the first floor?

A No.

Q Did you indicate anywhere in your report, sir, that you did not operate this machine, you did not test it with garbage in it?

A There was some small accumulation of garbage while I was there, but I didn't throw garbage down. Some of it fell down while I was testing it.

Q In order to test it to see if it does what the owner or the manufacturer or the designer says it is supposed to do, wouldn't you have to determine it that way, by having someone throw garbage down?

A Well, as I told you, sir, I examined this machine. When I examined it, there was some small accumulation of garbage in the hopper which we pushed out, and during the examination or during the testing phase of it, some small amount of garbage came down. In fact, in my report I say it was tested under virtually empty or unloaded conditions. I believe that statement is in my report.

Q So that your testing was of a rather limited nature, is that correct?

A It is a functional testing. That's what I

describe as a functional testing.

Q Functional meaning that you put the machine through the test or through its paces, so to speak, as though it were under normal conditions?

A That's right.

Q And normal conditions would be the free flow of garbage from time to time coming from the upstairs floors?

A Well, yes.

Q Whatever you learned about the events that had taken place and occurred to Mr. Merced, you learned from his attorney or from Mr. Merced at the time you were at the scene, is that correct --

MR. SHANDELL: I object to the form of the question.

Q -- in examining this particular machine?

THE COURT: I think you had better rephrase it.

Q You told us you received some information as to how the accident had happened?

A Yes.

Q When did you receive it?

A At the time of my inspection.

Q From whom did you receive it?

A Predominantly from Mr. Portnoy.

Q Did you receive any information from Mr. Merced?

A I believe I have said already it was difficult to communicate with him. He speaks very limited English.

Q You received some information from him?

A Hardly anything that I could, you know, use or integrate. I didn't know what -- it was difficult for me to communicate.

Q In any event, is this the sum and substance of what you were told as to what happened? I will read it to you from your report.

MR. SHANDELL: Objection.

THE COURT: I am sorry. I will allow it. He is reading from his report, sir.

MR. SHANDELL: The report incorporates something that a lawyer told him that is not evidence.

THE COURT: We don't know by virtue of the witness' answers which is which, so he is entitled to inquire. This is cross examination. Go ahead.

Q "The accident is reported to have taken place on July 13, 1972, at the current installation site of the inspected refuse compactor. At the time of the accident, Mr. Felix Merced, a general helper building employee, was assigned to a trash disposal task involving the compactor. In order to maintain operational continuity of the compacting cycle as part of this task, Mr. Merced at the same time had

"to dislodge some bulky material through the hopper access door. At this point a charge of garbage entered the hopper and caused Mr. Merced's right hand to become entangled in the compacting chamber area. Concurrently, the ram was on its compacting stroke and Mr. Merced was unable to free his hand. It subsequently became enmeshed between the saw teeth of the ram and the inner walls of the extrusion tube. As a result, Mr. Merced suffered traumatic amputation of his entrapped hand."

That is the sum and substance of what you were told, true?

A Yes.

Q Were you told anything at that time that a bottle had struck Mr. Merced in the head causing him to fall forward inside the hopper?

A Not that I recall. It would have been in there.

Q In other words, if it had been told to you, you would have put it down?

A I usually do, yes, sir.

Q You mentioned earlier that one of the safety features that a piece of machinery may have is a guard. Do you recall that, some form of guard?

A I mentioned it?

Q Yes, earlier today in your testimony, this morning.

A I don't recall mentioning it, sir.

Q Didn't you say that this machine should have had a guard, an interlock, various other items you mentioned?

A I said interlock. I don't recall the word "guard."

Q Did it have a guard?

A I don't know. What kind of a guard?

Q What is a guard in your parlance, in the engineering parlance, when it is said that a machine should have a safety guard, what is meant by that?

A A shield that goes around a piece of rotating or moving equipment.

Q And in this case you can't have a shield around this rotating equipment because the garbage doesn't get onto the equipment, is that correct?

A Inside the hopper. It is reciprocating.

Q It is impossible. What other type of guard could there be?

A Are you talking about safeguarding of machinery in general?

Q Yes.

A I mentioned interlock. That is a safeguarding method of machinery.

Q And what is another method?

A Awareness barriers.

Q How about a door? That's a guard, isn't it?

A If it is a fixed member that cannot be removed, it is a guard.

Q And a door is not removed, it can be opened, but it is not removable?

A Then it doesn't qualify as a guard.

Q Do you mean to say that a door which is locked and then eventually can be opened, that's not a guard?

A If it is readily operable, it is not a guard, it is a door.

Q Whether it is readily operable depends upon whether there is a lock there?

A Yes.

Q That's obvious, isn't it?

MR. SHANDELL: That's all I have.

THE COURT: Mr. Kohler.

MR. KOHLER: No questions.

THE COURT: Mr. Isaac.

CROSS EXAMINATION

BY MR. ISAAC:

Q Sir, sometime ago this morning you were asked a question and I don't recall which lawyer was the one that asked it, but you said in substance that there should have

been a warning of some kind in a manual. Do you remember testifying to that?

A Yes.

Q Did you see the manual that was supplied to my client, Southbridge Towers, with respect to this machine?

A I have seen a manual. I don't know whether it was supplied to your client.

MR. ISAAC: May we have Exhibit 4, which I believe is the number?

THE COURT: I believe that somebody has a copy at the back table of the brochure. Why don't we use that since Mr. Shandell doesn't even have his copy available.

MR. SHANDELL: I stripped my file to take it back to the office.

MR. ISAAC: I didn't want to take somebody else's private property.

THE COURT: With my help he won't object.

MR. ISAAC: With your help I am sure he won't.

THE COURT: Let's move along, please.

Q Did you see this? This is actually a copy of Exhibit 4 which is in evidence in this case.

THE COURT: It will be conceded that that's, in fact, the original of which Plaintiff's 4 is nothing more than a splendid Xerox, right?

MR. ISAAC: I accept that, your Honor.

Q Did you ever read that?

A I think I have seen it, yes. It looks familiar. Yes, I recall some of these diagrams.

Q I want you to assume, sir, that this is a document put out by the manufacturer of the machine and which was forwarded to the owner of the building who purchased this particular machine. I want to read a portion of it.

"This manual provides the Gobbler user with a description of the operating principle and the recommended installation procedure. Further, to provide the operator with insight into the internal workings of the machine, complete instructions for properly operating and maintaining the unit are presented along with pertinent electrical and hydraulic drawings and schematics."

I ask you, sir, whether there was any such warning to the purchaser of this automobile that you mentioned before this morning when you testified about the necessity for warning?

MR. SHANDELL: You said purchaser of automobile.

Q Purchaser of the Auto Pak machine. Excuse me.

A Are we talking about the type of warnings that we were --

Q I am talking about the type of warning that you

testified to this morning when you said there should be warnings in the manual that go to the user.

A Yes.

Q I show you that manual. I read the forward or a part of the forward to you. I ask you to assume that manual has been identified as a manual that was submitted to my client, Southbridge Towers, the purchaser of this particular compactor, and I ask you, sir, whether or not that manual contains any warning which you said was necessary.

A The preamble is just a general statement. So that is not a warning.

Q Is there any place in that booklet, sir?

A I don't see anything unless it is in part of the text.

Q Take your time. Look through it.

(Pause)

A I don't see anything of the type of warning that I was referring to this morning.

Q Now, sir, is there anything in that manual which was supplied to the purchaser of the machine, in this case Southbridge Towers, is there anything in that manual, sir, which gives any instructions concerning blockages or bridging?

Q I don't see anything in here that talks about it. It only talks about the general operating aspects of the

hydraulic system and ram.

Q My question is is there anything in the operating instructions or any other instructions in that book which would tell the user, in this case, Southbridge Towers, the purchaser of that machine, anything concerning bridging or blocking?

A I don't see anything in here.

Q Sir, can blocking occur in this machine whether it runs part of the day or whether it runs continuously?

A Yes, it can occur anytime.

Q If garbage is falling, sir, free into this hopper, can the use of a stick in any way speed up the rate that this garbage is flowing?

A Free falling?

Q Yes, free falling.

A Absolutely nothing to do with it.

Q If you stand there with a stick and the garbage is coming down the chute free falling and going to the hopper, can you make that garbage fall any faster by standing there with a stick?

A No.

Q That is not going to affect the gravity at all, will it?

A Absolutely not.

Q This morning, sir, you testified and you used the term "the design intent --" -- I am quoting "design intent." Those are the two words you have used -- of this machine to be automatic. Do you remember testifying to that?

A Yes, I do.

Q When you said "design intent," do you mean based upon the manual, based upon the examination of the machine itself it was the intention by design to be an automatic machine?

A Yes.

Q Was there any intent by design to have a manual operation of this machine with respect to the ram itself?

A You mean to operate the ram manually?

Q Yes.

A No.

Q There was a switch, correct?

A Yes.

Q On the side of the machine?

A Yes.

Q An on-off switch?

A Yes.

Q And there was another switch on the wall?

A Yes.

Q And if those switches were on "position," that's

all that was required by design for this machine to operate, is that right?

A Yes.

Q And if the on switch was on the side of the machine and the other wall unit switch was on, by design this was supposed to then begin to function, is t. t correct?

A Yes.

Q Mr. Aaronson, the question was asked of you and you were asked to assume that it was the recommendation of the installer that the machine run continuously. Do you recall being asked a question asking you to assume that basic fact?

A Yes.

Q Then you were asked certain opinions following that, do you recall that?

A Yes.

Q Mr. Aaronson, I would like you to assume that the installer in this case was a firm known as Universal Thermal Industries. I want you to assume, and I am now reading from the deposition of one of the officers of that company

MR. REGAN: Excuse me. If the Court please, I don't believe that's proper. That examination was never subscribed. It was only received by me the other day. I don't know whether this part is in evidence, that he is going to

read.

MR. ISAAC: It was read before.

THH COURT: It is part of the record that is already read. I don't know quite what your concern was. You didn't attend the deposition. I understand that.

MR. ISAAC: I attended, sir.

THE COURT: You did attend?

MR. ISAAC: Certainly.

MR. REGAN: I have no objection if the part he is going to read now has been read into the record. If he is going to read other parts of the deposition, I do object.

THE COURT: Since I am not privy to what he is going to read, I am totally at a loss as to what I am supposed to say.

MR. ISAAC: I can assure the Court I have read this, in any event.

THE COURT: I will accept that. After you hear, Mr. Regan, what it is, if you still want to object I will be educated and believe me I will rule on it with dispatch. Go ahead, sir.

Q This was the specific question and answer given at a deposition -- that's sworn testimony, Mr. Aaronson -- by the installer of the machine. I am reading from page 22 of the record, your Honor, in case you want to follow, line 5.

"Q Did Universal Thermal provide Southbridge with any recommended use of the machine, any instruction concerning the recommended use of the machine, specifically whether or not the machine was to be turned off at night and during certain periods of the day?

"A No. The hours were strictly up to the building."

I take it, sir, that has not been read to you before, is that correct?

A That's correct.

Q Does that in any way affect your opinions or conclusions that you expressed this morning concerning blockages?

A Blockages can occur under any condition except when it runs continuously the tendency may be reduced.

Q Now, sir, I also want to read to you what was sworn testimony of Mr. Milton Clar which has been read extensively by the lawyers in the case. Mr. Clar, sir, assume was the designer of this particular machine. I am reading now from page 63 -- I will start with the bottom of page 62 for continuity, if it is all right with the Court.

"Q Were there any instructions attached to the machine?

"A When the machines were sent out there was a set of instructions sent out at the same time to whoever

"the recipient of the machine was.

"Q Were these printed instructions on paper?

"A Yes.

"Q And that's the one that you think was in orange binding, or was it?

"A I could have changed colors as I printed them, but I remember, I think, the first ones that came out were orange.

"A Did your instructions include any instruction as to time in operation?

"A I don't follow you.

"Q Did your instructions instruct the apartment management as to whether or not this machine should be turned off or left off or turned on or what have you?

"Mr. Fried," who represented Auto Pak at that deposition: "There was an objection."

Mr. Shandell said, "I will rephrase the question."

"Q Did your instructions include any instruction as to how much of the day the machine should be left in operation?

"MR. FRIED: In other words, should it be limited from 24-hour operation?

"MR. SHANDELL: Exactly.

"A It wasn't limited in its operation.

"It was up to the apartment owner."

Now, sir, does that inany way change or alter the opinions you have expressed concerning blockages when you testified this morning?

A No.

Q I am continuing.

"Q Did you ever observe in your observations of this Gobbler what happened if the machine was turned off and garbage was allowed to stack in the chutes?

"A I haven't seen it, but I've heard it where people have cut off the machine.

"Q What happened? What did you hear?

"A I've heard when the machine is cut off the material would pile. Then in the morning they would turn the machine on and would feed everything that's in the hopper and extrude it to the bag. or if Auto Pak would compact it in the container.

"Q . But you never observed it being done, is that right?

"A Right.

"Q Did you ever instruct apartment owners not to do this?"

"MR. FRIED: Do what?

"Q Where the machine would be turned off and

where the garbage would stack up in the chutes.

"A Never told them.

"Q Never told them to do it or never told them not to do it?

"A Never told them to cut off the machine to allow it to pile up in the machine.

"Q Did you ever tell them not to do that?

"A No."

Did you understand, sir, those basic questions and answers?

A Yes.

Q Assuming that to be the state of facts as testified to by the designer of this machine, does that in any way affect your opinions and conclusions as to whether or not blockage occurs with or without continuous running?

A No.

Q You actually saw the machine, sir?

A Yes, I did.

Q If there were a piece of paper, debris, a box or anything else that became attached to that electric beam, that photoelectric cell, and interrupted that beam, would that activate the machine?

A After five seconds, yes.

Q After five seconds, correct?

A That's right.

Q Suppose you have the beam here and a piece of paper or piece of debris comes from the chute and attached itself or becomes hooked or caught on to that particular beam and stays there. That machine is going to continue to go back and forth and back and forth, correct?

A Absolutely.

Q And if nobody ever takes that piece of paper away from that beam it is going to continue working ad infinitum, is that correct?

A That's correct.

Q One of the ways to avoid that is to turn the machine off, isn't it?

A Yes.

Q If you turn off the machine, sir, it doesn't matter how much debris is blocking that machine, the machine isn't going to function?

A No, cut off the electric power.

MR. ISAAC: Bear with me a moment, Judge.

(Pause)

MR. ISAAC: Thank you very much. No further questions at this time.

THE COURT: Mr. Regan, do you have any questions?

MR. REGAN: Yes.

CROSS EXAMINATION

BY MR. REGAN:

Q These things you have been discussing concern the design of the machine, is that correct?

A That's correct.

Q And that's all you have been discussing, in other words, some manufacturing design, am I correct?

A I am not so sure. We went into a number of areas.

Q I represent a company that installed the machine. I have read through your thirteen page report and I don't see any mention of any error in installation. Am I correct?

MR. SHANDELL: Objection.

THE COURT: I think it can be better phrased rather error of installation. Could you rephrase that and clarify it?

Q Sir, am I correct your compaints with regard to this compactor were solely to the manufacturing design of the equipment itself?

A Yes.

MR. REGAN: Thank you.

THE COURT: Mr. Wilensky?

MR. WILENSKY: I have no questions.

THE COURT: You have any redirect, Mr. Shandell?

MR. SHANDELL: Yes, your Honor.

REDIRECT EXAMINATION BY

MR. SHANDELL:

Q The manufacturing design of the equipment itself would include requisite warnings when necessary, is that correct?

A That's correct.

Q Do you have a copy of the report in front of you?

A No, I don't.

Q You discussed some aspects of this report with Mr. Ivone earlier, Mr.Aaronson, is that correct?

A That's correct.

Q You were discussing the situation under which you observed this machine work, is that correct?

A That's correct.

Q And did you describe the situation when you observed it as a no-load condition?

A That's how I described it, yes.

Q And you said that you had not tested it under full load conditions, is that right?

A That's correct.

Q Mr. Ivone read to you from part of your report where you said --

(Pause)

MR. IVONE: While that is taking place, may I get back the instruction manual, your Honor, so I can be looking at it in the meantime?

THE COURT: Surely.

MR. SHANDELL: Here it is.

Q Mr. Ivone discussed with you that portion of the report where you stated that the compacting operation of the compactor is designed to be completely automatic.

A Yes, he did.

Q Did you also say in your report at page 4, "Frequently, however" --

A Right. Yes.

Q "Frequently, however, the free gravity flow of refuse materials into the compacting chamber is blocked by the lodging of bulky materials in the throat section of the hopper or a large accumulation of refuse material in the hopper"?

A Yes, I said that.

Q "And under such circumstances building maintenance personnel as a matter of general practice and procedure free such blockage by pushing down manually the refuse material through the hopper access door"?

A Yes, I said that.

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Q You were discussing the question of turning the machine off and allowing the garbage to stack up in the chute, is that right?

A Yes.

Q And you told Mr. Isaac here, representing the building owner, that this machine would tend to block up even if they didn't turn the machine off and let the garbage build up in the chute, is that right?

MR. IVONE: Objection, your Honor. I don't believe that is a proper characterization of the testimony.

THE COURT: Again, you got lost in your train of thought, so I would think you had better rephrase it for that additional reason.

Q You told Mr. Isaac, did you, that the machine would block or tend to block even though it ran continually 24 hours a day, is that right?

A Yes, it could block.

Q But that by having it run 24 hours a day the tendency to block would be reduced, is that what you said?

A Yes, I said that.

Q And, therefore, by turning it off and allowing the garbage to stack up, the tendency to block would be increased, is that right?

A Yes.

Q That's because, as you discussed with Mr. Ivone, you have these lateral forces building up when there is this weight of garbage coming down, is that right?

A Correct.

Q Did you find in this instruction booklet anything that advised the customer of the Auto Pak machine that by turning the machine off during part of the day they would increase the tendency to block up?

A It makes no reference to blockage at all.

THE COURT: Anything else?

MR. SHANDELL: Just a couple of questions, your Honor.

Q Mr. Ivone was discussing with you your personal feelings about relying on an interlock, do you recall that?

A I do.

Q You said, "I am a safety nut, I turn everything off"?

A Right.

Q Did you ever work on a machine with moving parts where you had to accomplish some amount of work within a time limit?

A Yes, I did.

Q Did you turn off the machine every time you got your hands near it?

A No.

Q Why is that?

A Everybody, if you have to do some task, you just do it, you don't follow safe procedures.

Q Is that why you design --

MR. IVONE: Objection, your Honor. I know what the question is.

THE COURT: You know something I don't. Finish your question.

Q Is that why the safety engineering profession devises safety devices for machines with moving parts?

A Precisely for that reason.

MR. IVONE: Objection.

THE COURT: I will let it stand.

MR. SHANDELL: I have no further questions.

THE COURT: Thank you.

MR. IVONE: Your Honor, I have a few questions.

THE COURT: There comes a time, Mr. Ivone. This has been going on all day. Remember, I have been giving you gentlemen a great deal of latitude but we have been going on a long time.

MR. IVONE: Issues have been raised.

THE COURT: There was nothing new that wasn't raised by you on original cross.

MR. IVONE: If I could ask the Court's indulgence.

THE COURT: I will indulge you but make it swift. We have been doing this a long time.

RECROSS EXAMINATION

BY MR. IVONE:

Q You just answered a question put to you by Mr. Shandell indicating more or less that when you are in a hurry sometimes you don't follow all the safety procedures, is that it?

A Yes.

Q In other words, it is a shortcut?

A If you have to do something, certain tasks to be put out, sometimes --

Q Is that what you are suggesting happened here, there was a shortcut?

A I am not suggesting it at all.

Q You were looking at the manual as to whether there were any warnings or not in the manual. Did you look at this portion of the manual or the instructions on page 24 with respect to "Recommendations - normal service and maintenance procedures described above may be performed by building maintenance personnel. They should be thoroughly familiar with the contents of this manual"? Do you see that?

A Yes.

Q It also provides there how you should check the oil, have the ram retracted at the time?

A Yes.

Q How to start it and stop it?

A Yes.

Q You looked at all of that?

A Yes.

Q Well, sir, you told us, did you not, that Mr. Merced couldn't speak English?

A Well, I didn't understand most of the things.

Q When you reviewed this case to give an opinion, did you also review this instruction booklet?

A I believe that instruction booklet came to me later. It wasn't available at the time I wrote the report.

Q In any event, you are familiar with the fact that whoever manufactured this machine or whoever designed it recommended that certain personnel should operate it and they be familiar with the contents of this book?

A That is maintenance. We are not talking about maintenance. This is an operational thing we are talking about.

Q You mean the recommended starting procedure is maintenance?

A One is by mechanics and one is by operators.

Q Are you aware of the fact that Mr. Merced says he was turning this machine on and off every day?

A I don't recall or I am not aware.

Q That has been the testimony, sir. He is the one that was turning it on and off.

A That is not maintenance, sir. That is an operation.

Q This doesn't mention anything about maintenance.

A It does, service and maintenance. You just read it to me.

Q In answer to a question by Mr. Isaac, he inquired if a piece of trash or paper got stuck in front of the electric eye during the course of some trash falling down that would be constantly interrupting the eye and, therefore, it would operate continuously, the ram would be going constantly back and forth, back and forth, do you remember that?

A He said interrupting the beam.

Q Interrupting the beam and the ram would be going back and forth?

A Yes.

Q He then asked you a question, of course, if you kept it off all night you wouldn't have that situation, do you recall that?

A I don't think it was connected in that way.

Q However it was that he meant it --

A That I don't know.

Q Do you see there is a portion on page 26 under Troubleshooting Guide, if the unit keeps running there are specific things that should be done?

A Yes.

Q It gives two probable causes. For instance, there may be a dirty lens on the photoelectric cell.

A That is another possibility.

Q They don't say you should keep it off all the time, they say you should clean the lens, don't they?

A Yes, as part of the maintenance procedure.

Q If a piece of dirt or a piece of paper gets stuck on the photoelectric lens thus causing continuous interruption, you don't stop it from continuous operation, all you do is stop it to clean the photoelectric lens?

A Yes.

THE COURT: Anything else?

MR. IVONE: Just a moment, your Honor. Just a moment.

Q Now, you have told us that looking at this manual you didn't see any specific warnings that you had in mind.

Is there anything in this manual that says that

someone can put his hand in that machine while it is operating, anything?

MR. SHANDELL: Objection, your Honor.

THE COURT: Yes. At this late stage I don't think that is necessary. The point has been made at least twice that I can recollect.

MR.IVONE: That's all I have.

MR. ISAAC: May I?

THE COURT: I hope it is brief.

MR. ISAAC: When your Honor thinks it is time for me to stop I will certainly abide by your ruling.

THE COURT: This is recross. Remember that. Go ahead.

RECROSS EXAMINATION

BY MR. ISAAC:

Q Mr. Ivone just showed you page 24, I believe he referred to, in this manual, Exhibit 4. The title of that page in capital letters says what, sir?

A Service and Maintenance.

Q Does it have anything to do with warnings?

A No.

Q He then showed you page 26 of this exhibit and that's to save time, Mr. Aaronson, entitled Troubleshooting Guide, is that correct?

A That's correct.

Q Underneath that it says, "Asterisked items can be handled by building engineer."

Do you see that?

A I see that.

Q That means there are certain things there with an asterisk which could be handled by the building, correct?

A That's correct.

Q Under the asterisk you have dirty lens on photocell.

A That's correct.

Q Anybody can sweep away a photocell?

MR. IVONS: It says building engineer.

Q Asterisked items can be handled by building engineer, correct?

A Right.

Q And the items which can be handled by a building engineer is a dirty lens on photocell?

A That's what it says.

Q Another asterisk, dirty lens on photocell exciter lamp?

A Yes.

Q Another asterisk. Photocell assembly out of alignment.

Another asterisk. Defective photocell exciter

lamp.

I think I repeated that twice. Forgive me.

Another asterisk. Low hydraulic oil. Do you see that, sir?

A Yes.

Q Now, there are thirteen items on this sheet, page 26, which cannot be handled by a building engineer, is that correct?

A That's correct.

Q And that's to be handled by the experts, either the maintenance people who installed it or by other experts in the field, correct?

A That's correct.

Q Now, one of the items, sir, which is not to be handled by a building engineer but by the expert is, "Motor keeps running - ram stuck, fully retracted", is that correct?

A Yes.

Q According to this booklet, sir, was the building engineer capable of performing that maintenance?

A Not according to this booklet.

Q Let's go to the one above that:

"Sympton. Motor keeps running - ram stuck, fully extended."

Is that one of the items to be taken care of by

the building engineer?

A Neither the cause nor the remedies are asterisked. So it means somebody else.

Q And the guide on page 26 says if it is asterisked it can be done by the building engineer?

A That's correct.

Q Is there an asterisk next to that symptom?

A No.

Q Meaning it must be done by some expert, is that correct?

A That's correct.

Q Another symptom, "Motor keeps running - ram does not move or moves slowly in a jerky manner."

Do you see that?

A Yes.

Q And then it says, "Defective pump, defective reverse valve solenoid, defective reversal valve," correct?

A Right.

Q Are there any asterisks next to those?

A No.

Q All those things have to be by someone other than the building, is that correct?

A That's correct.

MR. IVONE: I see one asterisk there, I believe.